TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1917

No. [redacted] 337

M. H. SMITH, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED [illegible]

([illegible])

MAY 2 [illegible]

(25,637)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 807.

M. H. SMITH, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print
Caption	a	1
Petition	1	1
Rule to show cause	24	22
Marshal's return	25	22
Appearance of respondent	25	23
Answer of respondent	26	23
Motion to strike out certain portions of respondent's answer	32	26
Opinion, Stafford, J.	36	29
Decree directing respondent to answer certain questions	51	38
Petition for appeal	54	40
Appeal allowed; order for citation and fixing supersedeas bond	54	40
Order allowing appeal, fixing bond, and for transcript	55	40
Bond on appeal	55	41
Power of attorney	56	42
Stipulation as to appeal and exhibit	60	44
Assignment of errors	60	44
Designation of record	68	49
Clerk's certificate	69	50

Judd & Detweiler (Inc.), Printers, Washington, D. C., January 12, 1917.

a Supreme Court of the District of Columbia.

In Equity. No. 34317.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
MILTON H. SMITH, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Petition.*

Filed May 10, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Equity.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
MILTON H. SMITH, Respondent.

To the Honorable the Judges of the Supreme Court of the District of Columbia:

The Interstate Commerce Commission, the above-named petitioner, brings this its petition against Milton H. Smith, of Louisville, Kentucky, the above-named respondent and says:

That your petitioner is an administrative tribunal, organized and existing under and by virtue of an Act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended;

That the Louisville & Nashville Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, and operates as a common carrier and is engaged in interstate commerce;

That by section 1 of said Act it is provided that all charges for the transportation of passengers and property shall be just and reasonable;

That by section 15 of said Act the Commission is authorized and empowered to determine and prescribe what shall be the maximum, just and reasonable rates or charges to be observed by interstate carriers, and what regulations or practices are just, fair and reasonable and to prescribe the same;

2 That by section 12 of said Act the Commission is given authority to inquire into the management of the business of common carriers, and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from such carriers full and complete information to enable the Commission to perform its duties;

That by section 13 of said Act the Commission may at any time institute an inquiry on its own motion in any case and as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act;

That by section 20 of said Act the Commission is authorized to require from said carriers detailed accounts of all their expenditures and revenues, and a complete exhibit of their financial operations, and further the Commission is authorized to prescribe the forms of any and all accounts, records and memoranda to be kept by the carriers;

In pursuance of the authority given it by the Act to Regulate Commerce, the Interstate Commerce Commission has prescribed and published forms for any and all accounts to be kept by carriers subject to the provisions of the Act to regulate commerce;

That by section 21 of said Act the Commission is required to make a report to Congress each year, containing information and data collected by the Commission as may be considered of value in determining questions connected with the regulation of interstate commerce;

3 By section 12 of said Act the Commission is empowered to require by subpœna the attendance and testimony of witnesses, and the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses;

That a resolution of the United States Senate adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable upon certain practices and financial relations of the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway and other carriers, which resolution is set out in the order of the Commission of date November 10, 1913, hereinafter described;

That thereafter the Commission instituted a proceeding of inquiry and investigation, and in that action made and duly served upon the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway Company, and other carriers, the following order and supplemental orders:

"*Order.*

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 10th Day of November, A. D. 1913.

Edgar E. Clark,
Judson C. Clements,
Charles A. Prouty,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
John H. Marble,
Commissioners.

"No. 6319.

"In re FINANCIAL RELATIONS, RATES, AND PRACTICES OF THE LOUISVILLE & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Other Carriers.

4 "The United States having, by Resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof and report to the Senate as soon as practicable—

"First. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad;

"Second. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been purchased, leased, controlled; or arrangements entered into with, for the purpose of controlling by either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway;

"Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part, and whether, under separate ownership, they would be competitive to the various points in their territories;

"Fourth. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates;

"Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louisville & Nashville Railroad, and what amount, if any, of stock, bonds and other securities of the Nashville & Decatur Railroad and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad or any of its subsidiaries or holding companies;

"Sixth. Whether the Nashville & Decatur Railroad, the Lewis-

burg & Northern Railroad, and the Louisville & Nashville
5 Railroad serve the same territory in whole or in part, and
whether, under separate ownership, these railroads would be competitive between various points in their territories;

"Seventh. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing or tending to show whether these relations restrict competition and maintain and fix rates;

"Eighth. Any fact or facts showing or tending to show (*a*) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict competition and maintain and fix rates; and (*b*) whether the lease of the Western & Atlantic Railroad by the Nashville, Chattanooga & St. Louis Railway from the State of Georgia, and the arrangement made between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway, by which the former uses the tracks of the said Western & Atlantic Railway, restrict competition, restrain trade, and determine and fix rates;

"Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dock yards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly and
restricts competition and determination and fixes rates;

6 "Tenth. Any fact or facts showing or tending to show
whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement;

"Eleventh. What amount of stock, if any, the Atlantic Coast Line Company, or Atlantic Coast Holding Company owns in the Louisville & Nashville Railroad, and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates;

"Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads; and

"Thirteenth. (*a*) The number of free annual passes, (*b*) the number of free-trip passes; (*c*) the number of every kind of free passes issued by each of said railroads each year since January 1, 1911, to members of legislative bodies and other public officials or at 7 the request of members of legislative bodies and other public officials; (*d*) the total mileage traveled upon free passes issued under each of the above classifications; and (*e*) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads;

"It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

"It is further ordered, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers, as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

"And it is further ordered, That a copy of this order be served upon each of the following-named railroad companies, and upon any other companies which may hereafter be designated by the Commission:

"Nashville, Chattanooga & St. Louis Railway;
"Louisville & Nashville Railroad Company;
"Nashville & Decatur Railroad Company;
"Lewisburg & Northern Railroad;
"Tennessee Midland Railroad Company;
"Tennessee, Paducah & Alabama Railroad;
"Western & Atlantic Railroad; and
"Atlantic Coast Line Railroad Company.

"By the Commission:

[SEAL.] GEORGE B. McGINTY, *Secretary.*"

8 *"Order.*

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 20th Day of March, A. D. 1916.

No. 6319.

"In re FINANCIAL RELATIONS, RATES, AND PRACTICES OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, AND OTHER CARRIERS.

"Order of Amendment and Consolidation.

"Upon consideration of an order dated November 10, 1913, in the above-entitled proceeding, and for good cause shown:

"It is ordered, That said order of November 10, 1913, be, and it is hereby, amended by adding after the last paragraph thereof the following:

"It is further ordered, That, after the hearings and the investigation authorized by this proceeding, the Commission may issue such order or orders in the matter as may be proper and necessary in the premises.

"It is further ordered, That the case before the Commission entitled Docket No. 8488, Luke Lea v. Louisville & Nashville Railroad Company et al., be, and it is hereby, consolidated for hearing with this proceeding, upon one record, at such times and places as the Commission may hereafter direct, that a copy of this order be filed in the record of said Docket No. 8488, and that the parties thereto have due notice of all subsequent proceedings herein.

"And it is further ordered, That copies of the original order herein and of this order be served upon all the parties to this proceeding and upon the parties to Docket No. 8488.

"By the Commission:

[SEAL.] —— ——, *Secretary*."

9 That thereafter, to wit, on the 27th day of April, in the year 1916, the said Commission, pursuant to said orders, held a hearing presided over by Commissioner B. H. Meyer, in the City of Nashville, Tennessee, and on the 29th day of April, in the year 1916, said hearing was adjourned to be resumed in the City of Washington on the 4th day of May in the year 1916:

That on the said 4th day of May, 1916, the said Commission pursuant to said orders held a hearing presided over by Commissioner B. H. Meyer in the City of Washington for the purpose of examining and inquiring into the matters and things above set forth:

That at said hearing in response to a subpœna served upon him, MILTON H. SMITH, the above defendant, appeared:

That after being duly sworn he stated that he was the President of the Louisville & Nashville Railroad Company and had been its chief executive officer since 1884, whereupon the said Milton H. Smith was asked certain questions which he was directed by the presiding commissioner to answer, but upon advice of counsel he refused to answer said questions or any of them:

That the said questions the witness refused to answer together with the reasons advanced and other pertinent and explanatory matters are as follows:

Pp. 955-961:

Mr. Folk: If the funds of the railroad are dissipated in reckless investments or in political campaign contributions, how can the shipper secure a reasonable rate?

Mr. Smith: There is no connection between the two matters, that is, the question of the adjustment of reasonable rates and the dissipation of the funds of the company.

Mr Folk: Suppose the Louisville & Nashville Railroad Com-

pany were to give to the Republican campaign fund or the
10 Democratic campaign fund the sum of $500,000, would that
affect the rates in any way?

Mr. Smith: Not in the slightest.

Mr. Folk: Suppose it were to make a political campaign contribution of $5,000,000.

Mr. Smith: Not the slightest.

Mr. Folk: Suppose it should make a contribution of $20,000,000.

Mr. Smith: Not in the slightest. It has nothing to do with the adjustment of rates.

Mr. Folk: You think a railroad could earn a fair return at the same rates, regardless of how it uses the funds so acquired?

Mr. Smith: The adjustment of rates is governed by conditions entirely independent of the revenues of a railroad company. The adjustment of rates of bankrupt roads that are operated by receivers of courts are handled in the same way and arrived at in the same manner as they are by the solvent roads.

Mr. Folk: For instance, Mr. Smith, how much did the Louisville & Nashville Railroad Company contribute last year for political campaign purposes?

Mr. Smith: I don't know.

Mr. Folk: Do you know how much it contributed in 1914?

Mr. Smith: No, sir.

Mr. Jouett: We object to that question, if your Honor please, as being wholly irrelevant and beyond the jurisdiction of the Commission to inquire.

Mr. Smith: I don't know.

Mr. Folk: Do you know how much the Louisville & Nashville Railroad Company contributed for campaign purposes in 1913 or in 1912?

Mr. Jouett: We make the same objection to that, your Honor.

Mr. Smith: I [illegible] not know that they contributed anything.

Chairman Meyer: These questions fall within the scope of the investigation, as you know, Mr. Jouett, and the witness is instructed to answer.

Mr. Jouett: Your Honor, we object to any questions relating to this subject-matter, and advise the witness not to answer, for the reasons stated in the former hearing.

Mr. Folk: Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?

Mr. Jouett: We make the same objection, your Honor, and advise the witness not to answer the question.

Mr. Smith: On advice of Counsel I decline to answer.

Chairman Meyer: And the ruling of the Commission is that the witness is instructed to answer.

Mr. Smith: Sir?

Chairman Meyer: I say the ruling of the Commission is that you are instructed to answer.

Mr. Folk: I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the

State of Tennessee for political campaign purposes during the year 1915, and charged on the books of that carrier to operating expenses?

Mr. Jouett: Your Honor, we make the same objection there, and give the witness the same advice.

Chairman Meyer: And the same ruling on the part of the Commission.

Mr. Smith: I decline to answer.

Mr. Folk: You decline to answer?

11 Mr. Smith: On advice of Counsel I decline to answer.

Mr. Folk: Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913, for political campaign purposes, and charged on the books of that carrier to operating expenses or to construction account?

Mr. Jouett: We make the same objection, and advise the witness not to answer.

Chairman Meyer: The same ruling on the part of the Commission.

Mr. Smith: On advice of Counsel I decline to answer.

Mr. Folk: I will ask you to state of your own personal knowledge, if you know, what funds of the Louisville & Nashville Railroad have been expended for political campaign purposes in the State of Kentucky during the year 1912, during the year 1913, and during the year 1914, and charged on the books of that carrier to operating expenses, to construction or to legal expenses.

Mr. Jouett: We make the same objection, your Honor, and give the witness the same advice.

Chairman Meyer: And the same instruction to the witness to answer the question.

Mr. Smith: On the advice of Counsel I decline to answer that question.

Mr. Folk: I will ask you to state, Mr. Smith, of your own knowledge, if you know whether it is the policy of the Louisville & Nashville Railroad to make political campaign contributions and to conceal the contributions so made by charging the contributions on the books of that carrier to suspense account, construction account, operating expenses or to legal expenses?

Mr. Jouett: We make the same objection there, your Honor, and advise the witness not to answer.

Chairman Meyer: The same ruling.

Mr. Smith: On the advice of Counsel I decline to answer.

Mr. Folk: I will ask you, Mr. Smith, to state of your own knowledge, if you know, what funds of the Louisville & Nashville Railroad have been expended, if any, in the State of Georgia for political campaign purposes during the years 1912, 1913, 1914 or 1915.

Mr. Jouett: We make the same objection.

Mr. Folk: Wait a minute, until I have finished the question—and charged on the books of that carrier either to operating expenses, suspense account, construction account or legal expenses?

Mr. Jouett: We make the same objection, and give the witness the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: On advice of Counsel I decline to answer.

Mr. Folk: You do not think, then, Mr. Smith, it makes any difference to the public, or that the public has any concern in the matter, how the railroad expends its funds acquired by and through the transportation of passengers and of freight, do you?

Mr. Jouett: We make the same objection, and give the same advice to the witness.

Mr. Folk: I am not asking about campaign contributions.

Mr. Jouett: It covers it in the same way.

Chairman Meyer: The same ruling.

Mr. Smith: On advice of Counsel I decline to answer.

12 Pp. 964-965:

Mr. Folk: Suppose you make a political campaign contribution of $1,000,000 in a certain year and charge that $1,000,000 up to operating expenses, do you think that would be a proper charge?

Mr. Stone: We object to that question.

Mr. Jouett: Yes, we object to the question, your Honor, and give the witness the same advice as before.

Chairman Meyer: And the witness is instructed to answer.

Mr. Smith: By advice of Counsel I decline to answer.

Mr. Folk: Mr. Smith, do you have knowledge of expenditures by the Louisville & Nashville Railroad Company for matters the nature of which is not disclosed to the stockholders of the Louisville & Nashville Railroad Company, or recorded in the books of accounts of that company?

Mr. Jouett: We object to that question also, and give the witness the same advice. It bears upon this general subject.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: By advice of Counsel I decline to answer.

Mr. Folk: So you think the gross income of a railroad has nothing to do with the rates?

Mr. Smith: The gross income has nothing whatever to do with the adjustment of rates. You have got to have an adjustment of rates that will secure traffic or you will not have any gross income.

Pp. 1066-1071:

Mr. Folk: You did not wish the Tennessee Central built because it would be a competitor of the Louisville & Nashville?

Mr. Smith: It would not have been a competitor. As I said, at that time I thought I wanted to have the road for the Louisville & Nashville and the Southern Railway as a joint line.

Mr. Folk: Do you recall when the city of Nashville voted on the proposition to issue $1,000,000 of bonds to aid the Tennessee Central?

Mr. Smith: I know something about that. That was years afterwards, though—many years after this occurrence. The city of

Nashville voted, I believe, $1,000,000, for which they were supposed to have received stock, which is worthless.

Mr. Folk: Do you recall the filing of a suit by a man named McClanahan to enjoin the city of Nashville from issuing those bonds?

Mr. Smith: I recall a suit that was brought by a man by that name, I believe, but I don't know for what purpose, whether it was to enjoin the issuing of the bonds or to prevent the issuing of the bonds or not. It seems to me the suit was for the purpose of establishing the illegality of the vote.

Mr. Folk: Of the election?

Mr. Smith: I think that was it, the illegality of the vote to make the subscription.

Mr. Folk: This suit purported to have been filed by McClanahan and some other taxpayers of Nashville, did it not?

Mr. Smith: I don't know. I know that name McClanahan was connected with the suit, but I don't know who was associated with it. Personally I know very little about it. I gave it no attention myself.

13 Mr. Folk: Did you know that the Louisville & Nashville Railroad Company paid the attorneys who appeared for the petitioner in that case?

Mr. Smith: I think not.

Mr. Jouett: In reference to this matter, Mr. Commissioner, we object to the testimony because it is included in paragraph 12 of the Senate resolution, and in our judgment is wholly outside the jurisdiction of this Commission. With respect to this, as in many other matters embraced in that paragraph, it may not be material or objectionable from our standpoint if the answers be given, but in view of it being, as we think, entirely out of the jurisdiction of the Commission, we do object to this and to all other matters relating to Section 12, and advise the witness not to answer the question.

Chairman Meyer: In conformity with previous rulings upon the same question, I shall direct the witness to answer it.

Mr. Folk: Do you refuse to answer that question, Mr. Smith?

Mr. Smith: By advice of Counsel I refuse to answer that question, yes, sir.

Mr. Folk: Do you know whether the Nashville, Chattanooga & St. Louis Railroad Company paid the attorneys?

Mr. Smith: I don't know.

Mr. Folk: In that case for the petition?

Mr. Smith: I have no personal knowledge.

Mr. Folk: Do you know that $100,000 of the amount subscribed by the people of Nashville to aid the Tennessee Central was paid to the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway Company by the Tennessee Central to have that suit dismissed?

Mr. Stone: We object to that, your Honor.

Mr. Jouett: We make the same objection, your Honor, and we give the same advice to the witness.

Chairman Meyer: And the same ruling on the part of the Commission.

Mr. Smith: By advice of Counsel I decline to answer.

Mr. Folk: In 1907 did not the Louisville & Nashville Railroad Company pay to the Nashville, Chattanooga & St. Louis Railway Company $50,000, its share of this $100,000?

Mr. Jouett: We make the same objection and we give the same advice to the witness.

Chairman Meyer: The same ruling.

Mr. Smith: I decline to answer the question.

Mr. Folk: Before this suit was dismissed, were not the people of Nashville deprived of the advantages that ought to be derived from the Tennessee Central by and through a lease of the Tennessee Central to the Illinois Central and Southern Railway for three years?

Mr. Smith: I know nothing of it.

Mr. Folk: You mean to say you know nothing of that lease?

Mr. Smith: Of what lease?

Mr. Folk: Of the Tennessee Central to the Southern Railway and Illinois Central.

Mr. Smith: I know in a general way.

Mr. Jouett: If you do not understand the question I will ask the stenographer to read it to you. Please read him the question again, Mr. Stenographer.

(The Stenographer thereupon read the pending question as previously recorded.)

14 Mr. Smith: I don't know.

Mr. Folk: Did you, Mr. Smith, in behalf of your railroad participate in any negotiations that led to the abandonment of this McClanahan suit?

Mr. Jouett: We object, if your Honor please, and give the same advice to Mr. Smith. It is bearing upon that same clause in Paragraph 12 of the Senate resolution.

Chairman Meyer: The same ruling.

Mr. Smith: Under the advice of Counsel, I decline to answer the question.

Mr. Folk: It was your desire, as President of the Louisville & Nashville Railroad Company, to keep the Tennessee Central out of Nashville, wasn't it?

Mr. Jouett: Your Honor, we make the same objection there as we have made to the others, as bearing upon the same question.

Chairman Meyer: And the same ruling.

Mr. Smith: Under the advice of Counsel I decline to answer that question.

Mr. Folk: When, in the past, you have made a contribution of funds of the Louisville & Nashville Railroad for political or any other purposes, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?

Chairman Meyer: Governor Folk, may I suggest, in view of the past declinations to answer, you eliminate "political" from your question.

Mr. Jouett: That is all right.

Mr. Folk: Eliminate the word "political."

Chairman Meyer: Then the witness may answer.

Mr. Jouett: We note the same objection, because it is immaterial. Read the question now.

The Reporter (Reading): "When, in the past, you have made a contribution of funds of the Louisville & Nashville Railroad for any purpose, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?"

Chairman Meyer: Make it "for any purposes other than political." I suggest that, Governor Folk, because the witness has been instructed to decline to answer questions of that kind, and they are to be certified to the court.

(The Reporter then read the question as follows:)

"When, in the past, you have made a contribution of the funds of the Louisville & Nashville Railroad for any purpose other than political, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?"

Mr. Folk: I desire to have the word "political" in there, and they desire to object to it.

I would like to ask the question with the word "political" in, and if he refuses to answer, or is advised by counsel not to answer, then I will ask other questions.

Chairman Meyer: If you want that for the record, leave it in, and then——

Mr. Stone: We object to the question, because, so far as the
political feature of the question is concerned, it has all been
15 passed on and was fully covered on yesterday. We want the
Commissioner to rule upon our objection to the question for
that reason.

Chairman Meyer: Well, for the same reason that I have hitherto instructed the witness to answer, I shall have to instruct the witness to answer here.

Mr. Jouett: And we object to the ruling of the Commissioner, and give the witness the same advice.

Mr. Folk: Now, will you read that question with the word "political" eliminated.

The Report- (Reading): "When, in the past, you have made a contribution of the funds of the Louisville & Nashville Railroad for any purpose, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?"

Mr. Jouett: Why not put it "other than political," Governor, and get the thing straight.

Mr. Folk: Make this question "contribution or expenditure for political or other purposes." Read that question.

The Reporter (Reading): "When, in the past, you have made a contribution or expenditure of the funds of the Louisville & Nashville Railroad for political or other purposes, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the Board?"

Mr. Folk: That is a question you refuse to answer. Now read the same question, making it "other than political."

Mr. Folk: * * * I show you a copy of ledger page of the N. C. & St. L. Railway in relation to the Tennessee Railroad Association, and I will ask you to examine these items and possibly your memory may be refreshed as to the purpose of the Tennessee Railroad Association (handing book to witness).

(The witness examined the book and handed same to Mr. Jouett.)

Mr. Folk: Mr. Jouett, according to our idea, the expenditure there comes within the classification of political expenditures, and possibly you may desire to take the answer.

Mr. Jouett: I think so myself. I shall object to it.

Mr. Folk: Then, I can ask a series of questions, and you can object to them.

Mr. Jouett: Will you read the last question?

(The pending question was read by the reporter.)

Mr. Jouett: Let me make a statement right there. I have examined this statement presented to you by Governor Folk. It seems to bear upon the matters, or some of the matters embraced in paragraph 12 of the Senate resolution, which we conceive to be outside of the jurisdiction of the Commission, so for the reasons heretofore stated, I object to the witness answering that question, and advise him not to answer it.

Chairman Meyer: The witness is instructed to answer.

Mr. Folk: Then you refuse to answer, Mr. Smith.

Mr. Smith: Upon advice of counsel, I refuse to answer.

Mr. Folk: I will ask you whether or not you know, of your own knowledge, that these expenditures of the funds of the Louisville & Nashville Railroad Company, through the Tennessee Railroad Association, and of the Nashville, Chattanooga & St. Louis
16 Railway, through the Tennessee Railroad Association, were made principally to state officials and legislators, judges, municipal officers and lobbyists?

Mr. Jouett: I wish to say that while that statement goes back over 20 years ago, and we know nothing about it, for the reasons heretofore given, we object to the question and advise the witness not to answer the question.

Chairman Meyer: The same ruling on the part of the Commission.

Mr. Folk: You refuse to answer, Mr. Smith?

Mr. Smith: Yes, by advice of counsel I refuse to answer.

Mr. Folk: Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

Mr. Jouett: For the reasons heretofore given we object to that question, and advise the witness not to answer.

Chairman Meyer: The same ruling.

Mr. Smith: By advice of counsel, I decline to answer.

Mr. Folk: Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

Mr. Jouett: We make the same objection and give the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: By advice of counsel, I decline to answer.

Mr. Folk: I will ask you, Mr. Smith, was there not a Kentucky Railroad Association organized for purposes in the State of Kentucky the same as the Tennessee Railroad Association in the State of Tennessee?

Mr. Smith: When?

Mr. Folk: And did it not make similar expenditures?

Mr. Jouett: He asked when, Governor Folk.

Mr. Folk: Up to 1902—from 1884 to 1902.

Mr. Jouett: We object to the question, and give the witness the same advice.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: By advice of counsel, I decline to answer.

Mr. Folk: You refuse to answer?

Mr. Smith: Yes.

——: Was there not an Alabama Railroad Association organized for similar purposes, and did it not make similar expenditures in the State of Alabama?

Mr. Jouett: You mean organized by different railroads, or by the Louisville & Nashville Railroad?

Mr. Folk: Organized for similar purposes as the Tennessee Railroad Association was organized for.

Mr. Jouett: Was organized by different railroads or——

Mr. Folk: Different railroads; yes, sir.

Mr. Smith: What is the date?

Mr. Jouett: What is the date of it, Governor?

Mr. Folk: From 1884 to 1902.

Mr. Jouett: We object to that and give the same advice.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: I refuse to answer upon advice of counsel.

Mr. Folk: Was there not a Georgia Railroad Association organized to operate in Georgia as the Tenessee Railroad Association operated in Tennessee?

17 Mr. Stone: We object to that.

Mr. Jouett: If it is of the same nature——

Mr. Smith: When?

Mr. Jouett: What is the date of it?

Mr. Smith: What is the date?

Mr. Jouett: Do you know?

Mr. Folk: From 1884 to 1902.

Mr. Jouett: Upon the statement that it is of the same nature, we make the same objection and give the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the Examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the president. The Examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

Mr. Jouett: Mr. Smith, I would like to direct your attention to this matter, and ask you whether that voucher, if you know anything about it at all, relates to the matters involved in Paragraph 12 of the Senate Resolution. If you know anything about it, and say that it does relate to matters embraced in that paragraph, why, we object to it as being outside of the jurisdiction of the Commission, and advise you not to answer. You may state, first, whether you know anything about it, and if you know anything about it, whether it is involved in that paragraph of the Senate resolution.

Mr. Smith: It is so involved.

Mr. Jouett: Then, is it involved solely with matters connected with that?

Mr. Smith: Yes.

Mr. Jouett: Then, I object to the question and advise the witness not to answer.

Mr. Folk: For political expenditures?

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: You stated that that was involved in Section 12. Do you mean a special part of Section 12?

Mr. Jouett: There are several parts of Section 12; I think any part of Section 12, but our objection goes to Section 12. We have objected to the advertising introduced by Mr. Jones.

Mr. Folk: That was something more specific than that.

Mr. Stone: We object to all.

Mr. Jouett: We object to all of the evidence offered by Mr. Jones about advertising, which is only one of the objections to paragraph 12, and these other items of section 12; I do not remember now the details.

Mr. Stone: Legislative agents.

Mr. Jouett: Legislative agents.

Mr. Stone: And contributions.

Mr. Jouett: Contributions and various things.

Mr. Folk: Don't you know, Mr. Smith, that the law requires the carrier to keep its records in such a way as to give a full, true and correct account of the moneys expended and the purposes of the expenditures?

Mr. Jouett: I do not think his knowing that makes any difference. The law fixes that. It may or may not be as the Governor suggests, but I think that is an immaterial question. I do not know how much Mr. Smith may know about just exactly what may be done, but it is immaterial what he may know of the law.

Mr. Folk: I want to ask him if he directed this to be made in such a way as to conceal information as to its purpose?

Mr. Jouett: You can ask him any question of that sort that you may want, and we will pass upon that.

Mr. Folk: Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

Mr. Jouett: We object to it and give the witness the same advice as to answering it.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Jouett: Governor, what is the date of that voucher, please?

Mr. Folk: February, 1910.

——: You do not refuse to answer on the ground of self incrimination, do you?

Mr. Jouett: We object to that question. It is not material.

Mr. Folk: No; the rule is that the witness must state his ground.

Mr. Jouett: He has stated that ground.

Mr. Folk: I have not heard him state it yet.

Mr. Jouett: He has not stated any ground except——

Mr. Folk: Right at this point, I would like you to state Mr. Jouett, whether you advise the witness to refuse to answer, as attorney for the witness or as attorney for the Louisville & Nashville Railroad?

Mr. Jouett: In this respect, as attorney for both, I advise him to decline to answer and claim any privilege he has about the matter.

Mr. Folk: Do you advise him to refuse to answer on the ground of self incrimination?

Mr. Jouett: I do not think we have to answer here what the purpose of it is. The law fixes whether or not he is liable for any incrimination.

Mr. Folk: At Nashville, you said the witness refused to answer on the ground he claimed the Commission had no power to inquire into the particular matters——

Mr. Jouett: That is the principal ground, but if he has any other privilege, I want him to rely upon every privilege.

Mr. Folk: So, here you are relying on lack of power of the Commission to investigate, and self incrimination?

Mr. Jouett: Principally the former, Governor.

Mr. Folk: I suppose the witness cannot refuse to answer a question before the Commission on the ground of self incrimination?

Mr. Jouett: I do not like to say anything that might appear to waive any privileges of the witness, or with reference to any future transaction. I do not know what it will be, but we simply stand originally upon our rights with reference to paragraph 12 of the Senate Resolution. That is beyond the jurisdiction of the Commission, but now, if there is anything else that you have hidden that I know nothing about, I reserve any other rights about it. I assume there is nothing in the world in there which will be in any wise incriminating.

Mr. Folk: You base your objection mainly on the lack of power of the Interstate Commerce Commission?

Mr. Jouett: Yes, sir.

19 Mr. Folk: Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad, appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce for $15,000, issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

Mr. Jouett: I will ask you first, Mr. Smith, if you know anything about that voucher, whether it related to matters embraced in paragraph 12 of the Senate Resolution?

Mr. Smith: Yes.

Mr. Jouett: It related exclusively to those matters, did it?

Mr. Smith: Yes.

Mr. Jouett: Then I object to the question and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: By advice of counsel, I refuse to answer.

Mr. Folk: According to the records of the Louisville & Nashville Railroad Company, Mr. Smith, the Louisville & Nashville Railroad Company collected from other carriers on account of the $13,000 expended by and through Mr. Jones, that I have mentioned, the following amounts:

N. C. & St. L. $360.29;
Atlanta & West Point Railway $381.81;
St. Louis & San Francisco, $565.72;
Seaboard Air Line, $158.14;
Mobile & Ohio Railroad, $141.26;
Central of Georgia, $237.90;
Atlantic Coast Line Railroad, $73.83;
Western Railway of Alabama, $111.17;
Alabama Great Southern, $1,318.39;
Southern Railway, $3,138.28;
From sources not stated, $1.382.07;

Total $7,867.86 collected from other carriers by the Louisville & Nashville, on account of these expenditures through Mr. Jones. Have you any recollection of these items?

Mr. Jouett: Now, we object to any further investigation in regard to the items on that voucher. I instruct the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: On advice of counsel, I refuse to answer.

Mr. Folk: Mr. Smith, did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that state?

Mr. Jouett: We object to that question, your Honor, and advise the witness not to answer, upon the grounds heretofore stated, that being embraced in paragraph 12 of the Senate Resolution.

Chairman Meyer: The same instructions on the part of the Commission.

Mr. Folk: You refuse to answer that question?

Mr. Smith: I refuse to answer that question on advice of counsel.

Mr. Folk: Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas agency in a campaign against rate reductions?

20 Mr. Jouett: I object to that question, and advise the witness not to answer.

Chairman Meyer: The same instructions on the part of the Commission.

Mr. Smith: On the advice of counsel I refuse to answer.

Mr. Folk: Did you not, Mr. Smith, write a number of advertisements yourself in that campaign in Alabama, and have them published under your own name through the Johnson-Dallas agency?

Mr. Jouett: I make the same objection and give the same advice to the witness.

Chairman Meyer: And the same instructions to answer.

Mr. Smith: I refuse to answer the question on the advice of counsel.

Mr. Folk: Did you see the advertisements in answer to Ex-Governor Comer, signed by Milton H. Smith, introduced in evidence at the hearing at Nashville, and if so, can you tell us what you know about those advertisements?

Mr. Jouett: I make the same objection and give the same advice to the witness.

Chairman Meyer: The same instructions to answer.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: I show you a letter addressed to Mr. George W. Jones, dated September 12, 1912, signed by yourself, and ask you if you, after examining this copy, can state whether or not you wrote the original?

Mr. Jouett: We object to the question and give the same advice to the witness.

Chairman Meyer: The same instructions to answer.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: This letter, Mr. Smith, is addressed:

"George W. Jones, Esq.:

"Herewith certain memorandums which may be used to advantage.

"The campaign will be a long one, and I advise that instead of making a comprehensive Answer to Comer's emanations, that one point be covered at a time—made as brief as possible and disseminated one at a time. We did quite effectively in 1884-'85. Puncture one error at a time, and possibly create an interest in future punctures. I do not give specific instructions, but leave the conclusion as to what is best to you and your associates. These memorandums if used need not in any way interfere with anything that Mr. Bowie or others may do.

"It may be best to publish without a responsible signature. If a pen name is desired, I suggest 'Irulus'; if deemed best, publish over my signature. In any event I will be responsible.

"Yours truly, M. H. SMITH, *President.*"

Do you recall writing that letter?

Mr. Jouett: We object to the question and give the same advice to the witness.

Chairman Meyer: The same instructions to answer.

Mr. Folk: You refuse to answer?

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: Do you know Mr. Sidney J. Bowie?

Mr. Smith: Yes.

Mr. Folk: He lives in Alabama?

21 Mr. Smith: Yes.

Mr. Folk: Do you know whether or not he wrote a large number of articles in answer to Ex-Governor Comer in reference to rate reductions during the year 1912?

Mr. Jouett: I make the same objection, and give the same advice to the witness.

Chairman Meyer: The same instructions to answer.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: Do you know whether the amount paid to Mr. Bowie, whether $80,000 or any other sum, covered compensation for writing those articles?

Mr. Jouett: We object to that, and give the same advice to the witness.

Chairman Meyer: The same instructions to answer.

Mr. Smith: I refuse to answer on the advice of counsel.

——: You had consultations from time to time with your directors as to the policy of using corporate funds for political purposes?

Mr. Jouett: We object to that question for the reason heretofore stated, and give the same advice to the witness.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: By advice of counsel, I refuse to answer.

Mr. Folk: Did you personally favor such expenditures, or were you ordered to make them by your directors?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I decline to answer by advice of counsel.

Mr. Folk: Have you ever been present at any conference of railroad managers where the policy of political contributions was discussed?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: If you personally favor such contributions of corporate funds, do you favor making them to a party you yourself oppose?

Mr. Jouett: I make the same objection and give the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: On the advice of counsel, I refuse to answer.

Mr. Folk: Do you favor them when made to a party, the large portion of your stockholders oppose?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: Do you justify taking funds partly owned by Republicans to help Democrats, or vice versa?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: Do the practical results of such contributions justify them as beneficial to the Louisville & Nashville Railroad Company in your opinion.

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: Are political contributions made by the Louisville & Nashville Railroad because, like the issuance of free passes, they are customary?

22 Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on the advice of counsel.

Mr. Folk: Has the Louisville & Nashville any political preferences as a general line of policy, or has it made these contributions to Republicans in Republican districts, and to Democrats in Democratic districts.

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: Can you tell us where the limit is to be drawn as to the amount of funds of the Louisville & Nashville Railroad which may be diverted from railroad purposes to campaign purposes?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: If the board of directors of the Louisville & Nashville Railroad does not act on such matters, do you believe that managing officials have a discretion to fix the amount which may be so diverted?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer on advice of counsel.

Mr. Folk: If these campaign expenditures are secret and not disclosed by the books and not reported to either stockholders or directors, how may the real parties in interest know whether a reasonable limit in expending the funds of the Louisville & Nashville Railroad for campaign purposes has been exceeded?

Mr. Jouett: The same objection and the same advice.

Chairman Meyer: The same ruling.

Mr. Smith: I refuse to answer.

Mr. Folk: I will ask you, Mr. Smith, if the safest rule in reference to the use of Louisville & Nashville funds for campaign purposes is not one that makes any corporation official responsible as for embezzlement who secretly uses corporate funds for campaign purposes?

Mr. Jouett: The same objection and the same advice.

Chairmen Meyer: The same ruling.

Mr. Smith: I refuse to answer.

That in pursuance of its duty under the law, it was incumbent upon your petitioner to enable it to perform the functions for which it was created to procure the information sought by the questions put to the said witness, Milton H. Smith, and which he refused to answer;

That your petitioner is of the opinion that the said questions and
each of them are relevant and material to the matter under investi-
gation and that an answer to each of said questions is neces-
23 sary in order to enable your petitioner to discharge its duty
and execute and enforce the provisions of said Act to regulate commerce and to inform your petitioner as to the manner and method in which the business of the said common carrier is conducted and to enable your petitioner to obtain full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created;

For the purpose of showing the nature of examination of said witness and the relevancy and pertinency of the questions he refused to answer a copy of all the testimony of said witness is attached hereto as Exhibit A.

Wherefore, your petitioner prays that an order or orders be made requiring the attendance before your petitioner of said witness at a time and place to be fixed by said Commission, and the making by him of a full answer to each of the questions respectively declined to be answered by him as aforesaid and to any and all other pertinent questions relating to the subject matter aforesaid which said Commission may require him to answer, and for such other and further relief as may be just and proper in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOS. W. FOLK,
CHAS. W. NEEDHAM,
P. J. DOHERTY,
H. HULL,
Counsel.

CITY OF WASHINGTON,
District of Columbia, ss:

I, B. H. Meyer, on oath depose and say, that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said Commission: That I have read the foregoing petition and know the contents thereof, and that the same is true.

B. H. MEYER.

24 Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 10th day of May, A. D. 1916.

[SEAL.]

GEO. F. GRAHAM,
Notary Public.

Rule to Show Cause.

Filed May 10, 1916

In the Supreme Court of the District of Columbia.

No. 34317.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
MILTON H. SMITH, Respondent.

In the Matter of the Request of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent, Milton H. Smith, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

The Interstate Commerce Commission having duly filed petition to the Judges of the Supreme Court of the District of Columbia for an order or orders requiring the above-named Respondent, Milton H. Smith, to appear before said Interstate Commerce Commission, at a time and place to be fixed by said Commission, and to make full answers to the questions theretofore refused to be answered by said Milton H. Smith as set forth in said petition, and to any and all pertinent questions relating to the subject matter set forth in said petition, which said Commission might require him to answer;

It is therefore ordered, That said Milton H. Smith, the above-named Respondent, be, and he is hereby required to appear before said Supreme Court of the District of Columbia, at a session of said Court to be held in the District Building, in the City of Wash-
25 ington, District of Columbia, on the 19th day of May, 1916,
at 10 o'clock in the forenoon in Circuit Court number two and then and there to show cause why said petition should not be granted.

WENDELL P. STAFFORD,
Judge Supreme Court of the District of Columbia.

Marshal's Return.

Received the within Order and copy at Louisville, Ky., May 12, 1916. Executed same in Louisville, Ky., May 12, 1916, on the within named, Milton H. Smith, by delivering a true copy hereof to him. This May 12, 1916.

E. H. JAMES,
U. S. Marshal,
By J. R. HOWELL, *D. M.*

Fees................	$2.00
Exp.................	.20

Appearance of Respondent.

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

Equity. 34317.

Interstate Commerce Commission, Petitioner,
vs.
Milton H. Smith, Respondent.

Now comes the Respondent, Milton H. Smith, through his counsel, and enters his appearance in the above-entitled cause.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

26 *Answer of Respondent.*

Filed July 7, 1916.

In the Supreme Court of the District of Columbia.

#34317. Eq.

Interstate Commerce Commission, Petitioner,
vs.
Milton H. Smith, Respondent.

Respondent, Milton H. Smith, for answer to the petition herein, says:

He admits that the petitioner is an administrative tribunal, and says that it has no jurisdiction, rights, duties, or powers, except such as are given it by an act of Congress, entitled "An Act to Regulate Commerce," approved February 4, 1887, and amendments thereto, and a few other special powers given it by special acts of Congress, which, however, do not pertain to anything involved in the present controversy. And respondent says that the power to investigate political questions, or questions as to whether or not common carriers have engaged in political activities, or in attempts to create sentiment in favor of their plans are not among the powers given to the Interstate Commerce Commission. And neither is the power to investigate the question as to whether or not a particular common carrier has attempted to prevent another common carrier from entering the territory in which the first carrier operates, among the powers conferred upon the Interstate Commerce Commission. The powers of that Commission, which is a purely ministerial tribunal, having only the powers given it by act of Congress, are, with the few exceptions

above stated, confined to the enforcement of the Act to Regu-
27 late Commerce, and the amendments thereto; and that act, as
amended, does not attempt to regulate the politics or political activities of common carriers, nor the subject of their endeavoring to exclude competitors from their territories.

But respondent says that the sole object of the major part of the questions propounded *by* him by the counsel for the Interstate Commerce Commission, and which he declined to answer, was to delve into questions purely political, and to ascertain whether or not respondent personally, and as the President of the Louisville & Nashville Railroad Company, believed that a Railroad Company had the right to engage in political campaigns and to make political contributions; and as to whether or not it had been the policy of the Louisville & Nashville Railroad Company to engage in political campaigns and to make contributions of funds to such campaigns; and as to whether or not said Louisville & Nashville Railroad Company had in the past in fact engaged in such political campaigns, or made contributions of funds to the same, and if so, to what extent, and when and where; all of which matters, as respondent is advised, are matters entirely outside the jurisdiction of the Interstate Commerce Commission, and concerning which it had no right to demand that this respondent should answer.

And respondent says that the proceeding before the Interstate Commerce Commission, in which he was interrogated and out of which the present controversy arises, is a consolidation of two proceedings, principally against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, before the Interstate Commerce Commission, to wit, Nos. 6319 and 8488 on the docket of
that Commission; that Luke Lea is the open and sole com-
28 plainant in the latter, and is the instigator and real complain-
ant in the former, of said two proceedings; that said former proceeding, to wit, No. 6319, was instituted by the Interstate Commerce Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by said Luke Lea, who then was, and now is, a member of said Senate, and who is the open complainant in the other of said two proceedings, to wit, No. 8488, the complaint in which is confined solely to the alleged improper issue of free passes by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

Respondent says that at the time said resolution was introduced into the Senate, as aforesaid, which was in August, 1913, the said Luke Lea, who then was, and now is, the owner and operator of a newspaper in the city of Nashville, Tennessee, was engaged in a bitter attack upon the Louisville & Nashville Railroad Company through the columns of his said newspaper, due to the fact that the said Louisville & Nashville Railroad Company, or certain of its officials, had declined to do for him what he had requested, the result of which was that he began and continued attacking the Louisville & Nashville Railroad Company through the editorial column of his said newspaper; and in the midst of said attack introduced into the Senate of the United States the resolution aforesaid, in August, 1913, which

he did not bring to a vote until in November, 1913, at a time when, as respondent is advised, only fourteen members of the Senate were present. Following the entry of the order of the Interstate Commerce Commission, pursuant to said Lea resolution, an extensive examination of the accounts, records and memoranda of the Louis-
ville & Nashville Railroad Company and the Nashville, Chat-
29 tanooga & St. Louis Railway was made by examiners of the
Interstate Commerce Commission during the course of which they attempted to examine the correspondence of said Companies, which, however, the Supreme Court of the United States held they were not entitled to do (United States vs. Louisville & Nashville Railroad Company, 236 U. S. 318). Pursuant to said resolution the Commission made two elaborate reports to the Senate, viz., on July 7, 1914, and February 16, 1915, covering the matters embraced in said resolution; but no attempt was ever made by the said Commission to have any hearing, or to examine any witnesses, pursuant to its order under the Lea resolution aforesaid, which order was made on Nov. 10, 1913, until more than two years and four months thereafter, and not until after said Luke Lea had made a political race for reelection to the United States Senate *for* Tennessee in the year 1915, and had been defeated, after which, manifestly through his insistence, and presumably without any knowledge upon the part of the Interstate Commerce Commission of his ulterior motives, the said order of investigation, which had lain dormant for so long a period, was revived, and an attempt was made by means of the questions which respondent declined to answer, to inquire into the question of whether or not the Louisville & Nashville Railroad Company had been taking a part in politics, and especially in the State of Tennessee; the first question, specific as to time and place, asked of respondent on this subject of political contributions being as to whether or not respondent knew of any funds of the Louisville & Nashville Railroad Company "expended in the State of Tennessee for political campaign purposes during the year 1915"; Tennessee being the State
and 1915 the year in which said Luke Lea made his unsuccess-
30 ful political campaign for his party's nomination as a candi-
date for the United States Senate.

And respondent submits that the Interstate Commerce Commission has no lawful right, and no power, to command him to answer questions on the subject of political contributions, or other political activities; and to do so is a perversion of the purposes for which the Interstate Commerce Commission was created.

And so as to questions asked of respondent, and which he declined to answer, as to whether or not the Louisville & Nashville Railroad Company attempted to create sentiment in favor of its plans or took any part in a suit instituted in the city of Nashville, Tennessee, by one McClanahan against the city of Nashville to enjoin an issue of bonds by that city in favor of the Tennessee Central Railroad, and as to whether or not he, the respondent, desired to prevent the building of that railroad, or other railroads, into territory served by the Louisville & Nashville Railroad Company. This is a matter wholly outside of the jurisdiction of the Interstate Commerce Commission, and over which it is given no power of investigation or regulation.

Respondent avers and submits that he was, and is, justified in refusing to answer the questions, and each of them, set forth in the petition, which he did refuse to answer; and that the petitioner, the Interstate Commerce Commission was, and is, without lawful power or jurisdiction to investigate or regulate the subjects concerning which said questions were asked, and was, and is, without lawful power or jurisdiction to call upon or require him to answer said questions, or any of them.

31 As to the allegations of the petition concerning the meaning and effect and requirements of the Act to Regulate Commerce as amended, respondent refers to said Act and its amendments to speak for themselves, but denies the legal effect attributed thereto by the petitioner, as well as other legal conclusions stated in the petition. And respondent denies that, pursuant to its duty under the law, it was encumbent upon petitioner, to enable it to perform the functions for which it was created, to procure the information sought by the questions put to respondent, and which he refused to answer.

Wherefore, having fully answered, respondent prays to be hence dismissed with his costs.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

STATE OF KENTUCKY,
County of Jefferson, ss:

Respondent, Milton H. Smith, says that the statements of the foregoing answer are true, as he verily believes.

M. H. SMITH.

Subscribed and sworn to before me by Milton H. Smith this May 24, 1916.

My commission expires January 23, 1918.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Kentucky.

32 *Motion to Strike Out Certain Portions of Respondent's Answer.*

Filed August 9, 1916.

In the Supreme Court of the District of Columbia.

No. 34317.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
MILTON H. SMITH, Respondent.

Now comes the petitioner, the Interstate Commerce Commission, and moves to strike out of the respondent's answer filed herein the following portions, to wit:

Beginning at the first paragraph, line 10, page 2, and extending to the first paragraph, line 2, page 5, as follows:

But respondent says that the sole object of the major part of the questions propounded to him by the counsel for the Interstate Commerce Commission, and which he declined to answer, was to delve into questions purely political, and to ascertain whether or not respondent personally, and as the president of the Louisville & Nashville Railroad Company, believed that a railroad company had the right to engage in political campaigns and to make political contributions; and as to whether or not it had been the policy of the Louisville & Nashville Railroad Company to engage in political campaigns and to make contributions of funds to such campaigns; and as to whether or not said Louisville & Nashville Railroad Company had in the past in fact engaged in such political campaigns, or made contributions of funds to the same, and if so, to what extent, and when and where; all of which matters, as respondent is advised, are matters entirely outside the jurisdiction of the Interstate Commerce Commission, and concerning which it had no right to demand that this respondent should answer. 33

And respondent says that the proceeding before the Interstate Commerce Commission, in which he was interrogated and out of which the present controversy arises, is a consolidation of two proceedings, principally against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, before the Interstate Commerce Commission, to wit, Nos. 6319 and 8488 on the docket of that commission; that Luke Lea is the open and sole complainant in the latter, and is the intigator and real complainant in the former, of said two proceedings; that said former proceeding, to wit, No. 6319, was instituted by the Interstate Commerce Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by said Luke Lea, who then was, and now is, a member of said Senate, and who is the open complainant in the other of said two proceedings, to wit, No. 8488, the complaint in which is confined solely to the alleged improper issue of free passes by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

Respondent says that at the time said resolution was introduced into the Senate, as aforesaid, which was in August, 1913, the said Luke Lea, who then was, and now is, the owner and operator of a newspaper in the city of Nashville, Tennessee, was engaged in a bitter attack upon the Louisville & Nashville Railroad Company through the columns of his said newspaper, due to the fact that the said Louisville & Nashville Railroad Company, or certain of its officials, had declined to do for him what he had requested, the result of which was that he began and continued attacking the Louisville & Nashville Railroad Company through the editorial column of his said newspaper; and in the midst of said attack introduced into the Senate of the United States the resolution aforesaid, in August, 1913, which he did not bring to a vote until in November, 1913, at a time when, as respondent is advised, only fourteen Mem- 34 bers of the Senate were present. Following the entry of the order of the Interstate Commerce Commission, pursuant to said Lea resolution, an extensive examination of the accounts, records, and memoranda of the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway was made by examiners of the Interstate Commerce Commission, during the course of which they attempted to examine the correspondence of said companies, which, however, the Supreme Court of the United States held they were not entitled to do (United States v. Louisville & Nashville Railroad Company, 236 U. S., 318). Pursuant to said resolution the commission made two elaborate reports to the Senate, viz., on July 7, 1914, and February 16, 1915, covering the matters embraced in said resolution; but no attempt was ever made by the said commission to have any hearing, or to examine any witnesses, pursuant to its order under the Lea resolution aforesaid, which order was made on November 10, 1913, until more than two years and four months thereafter, and not until after said Luke Lea had made a political race for reelection to the United States Senate for Tennessee in the year 1915, and had been defeated, after which, manifestly through his insistence, and 35 presumably without any knowledge upon the part of the Interstate Commerce Commission of his ulterior motives, the said order of investigation, which had lain dormant for so long a period, was revived, and an attempt was made, by means of the questions which respondent declined to answer, to inquire into the question of whether or not the Louisville & Nashville Railroad Company had been taking a part in politics, and especially in the State of Tennessee; the first question, specific as to time and place, asked of respondent on this subject of political contributions being as to whether or not respondent knew of any funds of the Louisville & Nashville Railroad Company "expended in the State of Tennessee for political campaign purposes during the year 1915," Tennessee being the State and 1915 the year in which said Luke Lea made his unsuccessful political campaign for his party's nomination as a candidate for the United States Senate.

The petitioner states that:

1. The said portions of the answer are irrelevant, immaterial, and not responsive to the averments of the petition.

2. The motives of the United States Senate in adopting the resolution and the motives of the Interstate Commerce Commission in making the order providing for this inquiry can not be the subject of a judicial inquiry.

3. The jurisdiction of the Interstate Commerce Commission and its power to enforce the performance of the legal duty of the carrier to inform the Commission as to the expenditure of its funds is a matter of law and not of fact.

4. The Interstate Commerce Commission has jurisdiction, as a matter of law, to be informed as to all expenditures of an interstate carrier, and this jurisdiction is not defeated because the 36 particular expenditure may be for political purposes, to suppress competition, or to influence public sentiment.

Wherefore the petitioner prays that the said portions of the answer as herein described be stricken out.

JOS. W. FOLK.
Counsel for the Interstate Commerce Commission.

Opinion.

Filed October 2, 1916.

In the Supreme Court of the District of Columbia.

In Equity. No. 34317.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
MILTON H. SMITH, Respondent.

The case arises upon a petition, presented by the Interstate Commerce Commission, to have the respondent Smith directed to answer certain questions which had been put to him as a witness in the course of an inquiry before the Commission, and which he had refused to answer upon the ground that they involved matters into which the Commission had no authority in general, and certainly none in the proceeding then pending, to inquire.

The petition reminds the Court that the Commission is an administrative tribunal under the Act to Regulate Commerce and its amendments; that the Act requires that all charges for transportation shall be just and reasonable; that it authorizes the Commission to determine and prescribe such rates, as well as the regulations and
37 practices of carriers; that it authorizes the Commission to inquire into the management of the business of carriers and to keep itself informed as to the manner in which it is conducted, and to obtain from carriers complete information to enable it to perform its duties; that the Commission is authorized at any time and of its own motion to institute an inquiry "in any case and as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any of the provisions of the Act, or relating to the enforcement of any of the provisions" thereof; that the Commission is authorized to require from carriers detailed accounts of all their expenditures and revenues, and a complete exhibit of their financial operations, and to prescribe the forms of all accounts, records and memoranda to be kept by carriers. The petition alleges that in pursuance of the Act the Commission has prescribed and published forms for all such accounts. It further reminds the Court that by the Act the Commission is required to make a report to Congress each year containing information collected by it so far as the same may be considered of value in determining questions connected with the regulation of interstate commerce; that by the Act it is empowered to require by subpœna the attendance and

testimony of witnesses, and to that end to invoke the aid of any Court of the United States.

The petition then alleges that by a resolution of the United States Senate, adopted November 6, 1913, the Commission was directed to investigate, take proof and report to the Senate upon certain practices and financial relations of the Louisville & Nashville Railroad Company and certain other carriers, which resolution is recited in
38 the order of the Commission and so made a part of the petition; that in pursuance of said resolution the Commission on November 10, 1913, issued its order reciting the resolution and directing that a proceeding of inquiry be instituted concerning "the several matters and things set forth and referred to in the said resolution"; that the proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers, as the Commission might thereafter direct; and that the investigation be carried on in the meantime by such other means and methods as might be deemed appropriate. Said order will be found recited in full in the margin to the report of U. S. v. Louisville & Nashville Railroad Company, 236 U. S. 318. For the purposes of this opinion it will be sufficient to state that the resolution contained thirteen paragraphs calling for inquiry into the amount of securities held by certain of said roads, as to what other railroads in certain territory had been leased or controlled by certain of said roads, as to whether certain territory would be served by more than one of said roads, as to the actual relations existing between certain of said roads with respect to competition, as to the ownership of securities by one of said roads in another of said roads by virtue of the terms of a certain lease, as to whether the relations were such as to restrict competition, and as to the issuing of free passes. As the questions presented in this case arise under the twelfth paragraph, that will be quoted. It reads as follows:

> What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended or contributed for the purpose of
> 39 preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads.

The petition further states that on March 20, 1916, the Commission issued another order amending said order of November 10 by ordering that after the hearings and investigations thereby authorized the Commission might issue such order as might be proper in the premises; and by ordering the consolidation of said proceeding with another against the said railroads in which Luke Lea was complainant; that on April 27, 1916 pursuant to said orders the Commission held a hearing in Nashville, Tennessee, which, on the 29th of the same month was adjourned to be resumed in Washington, D. C., on May 4, 1916; that at said adjourned hearing the respondent Smith, having been served with a subpœna, appeared and was sworn as a witness, and testified that he was the President of the Louisville & Nashville Railroad Company and had been its chief executive officer since 1884; that he was then asked certain questions which he was directed by the presiding Commissioner to answer, and to answer which he refused.

The petition then inserts certain pages from the transcript of the stenographic report of the hearing, showing questions and answers leading up to and including the questions under consideration as well as comments of counsel, directions by the presiding Commissioner and the witness' grounds for refusing to answer.

Counsel for the Commission in his brief has selected ten of the questions which the witness thus refused to answer and has treated these as sufficiently illustrative, and in his oral argument has stated that the Commission is content to rest upon these and if answers thereto shall be enforced will not insist upon answers to the others. Accordingly this part of the record is here quoted:

Mr. Folk: I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the State of Tennessee for political campaign purposes during the year 1915 and charged upon the books of that carrier to operating expenses.

Mr. Smith: Upon advice of counsel I decline to answer.

The following questions were then asked each of which the witness declined to answer:

Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?

Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway?

Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

Among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the President. The examiners were refused all information regarding this voucher. Can you tell us what it is about and what the voucher is for?

Can you tell why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce for $15,000, issued for certain expenditures authorized by the President. All further information was refused the accountants.

The books give no other information. Can you advise or enlighten us as to the purposes of this $15,000 voucher?

Did the Louisville & Nashville Railroad Company through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against
41 rate reductions as advocated by former Governor Comer of that State?

Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?

Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know?

The petition further informs the Court that the Commission felt it to be incumbent upon it to procure the information sought by said questions in order that it might "perform the functions for which it was created;" that in the opinion of the Commission each of said questions is relevant and material to the matter under investigation, and that an answer to each is necessary "to enable the Commission to discharge its duty and execute and enforce the provisions of said Act and to inform the Commission as to the manner and method in which the business of the said carriers is conducted and to enable the Commission to obtain full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created."

For the purpose of showing the nature of the examination of the witness and the pertinency of the questions a copy of all his testimony is made by reference a part of the petition.

Wherefore the petition prays for an order requiring the attendance of the witness before the Commission at a time and place to be fixed by the order and the making by him of a full answer to each of the said questions and to all other pertinent questions relating to the subject-matter aforesaid which the Commission may require him to answer, and for general relief.

The petition is duly verified by the oath of the Commissioner who presided at the hearing.

42 The respondent in his answer insists that the Commission is without power to "investigate political questions or questions as to whether or not common carriers have engaged in political activities, or in attempts to create sentiment in favor of their plans, or as to whether a particular common carrier has attempted to prevent another from entering the territory in which it operates;" that the power of the Commission is purely statutory and is not extended to any of these subjects by the Act to regulate commerce or by any other statute; that the sole object of the major part of the questions under consideraion was to delve into questions purely political and to ascertain whether the respondent personally or as President believed that a Railroad Company had the right to engage in political campaigns and to make political contributions and whether it had been the policy of his road to so engage and contribute, and as to whether said road had in fact so engaged and contributed, and if so, when and to what extent; all of which matters, he insists, are entirely

outside the Commission's jurisdiction. He says that the proceeding in which he was interrogated is a consolidation of two proceedings against said road in one of which Luke Lea is the open and sole complainant and in the other the real complainant and instigator; that said Lea is a member of the United States Senate upon whose resolution one of said proceedings was instituted, and that the one in which said Lea appears as complainant is confined to the alleged improper issue of free passes. He then proceeds to state that said Lea is the owner and operator of a newspaper in Nashville and as such was engaged in a bitter attack in the columns of his paper upon the Louisville & Nashville Road, being prompted thereto by personal hostility toward its officials, and in the midst of said attack
43 introduced said resolution in the Senate and secured its adoption at a time when only fourteen Senators were present; that following the entry of the order of the Commission an extensive examination of the accounts of the road was made by examiners of the Commission, in the course of which they attempted to examine the correspondence of the road which however the Supreme Court of the United States (U. S. v. Louisville & Nashville Railroad Company, 236 U. S. 318) held they were not entitled to do; that pursuant to the resolution the Commission made two elaborate reports to the Senate (July 7, 1914 and February 16, 1915), covering the matters in the resolution, but made no attempt to have a hearing or examine witnesses until two years and four months after it had issued its order and after Lea had been defeated as a candidate for reelection to the Senate; whereupon and as he believes upon the instigation of Lea said order was revived and an attempt made by the questions under consideration to find out whether said road had been taking a part in politics and especially in Tennessee; and he points to the fact that the first specific question put to him on the subject of political contributions was, whether the road had expended any funds for political campaign purposes in Tennessee in 1915, which was the State and year in which Lea had been defeated as aforesaid.

The petitioner has moved to strike out of the answer all that relates to the motive prompting the investigation and Lea's connection therewith. The motion is probably too broad to be granted as a whole and as it cannot be divided by the Court it is considered best that it should be overruled, although some matters to which it is addressed will be treated as immaterial in disposing of the case.

The position taken by the Commission is that the inquiry
44 it is conducting is neither stronger nor weaker by reason of the fact that it was instituted pursuant to the Senate resolution (See U. S. v. L. & N. R. R. Co. 236 U. S. 318) and to this the respondent agrees, and that the inquiry is to be considered in all respects as having been instituted upon the Commission's own motion; that treated in this way the real questions are whether the subject matter of inquiry as expressed in the order is one into which the Commission was authorized to go and if so whether the interrogatories are properly directed to that subject. The Commission's counsel contends that the subject-matter of inquiry is expenditures, and that the fact that the inquiry touching expenditures takes the line

of political expenses is a mere incident, the real object being to find out what the road has been doing with its earnings, and especially whether items of expenditures appearing in its accounts and vouchers as having been made for operating or legal expenses were in fact made as campaign contributions or for one of the other purposes stated in paragraph twelve of the order. He insists that the information thus sought may well be necessary to enable the Commission to deal intelligently with the question of rates; and also that the charging of compaign expenses under some other and unrelated name presents a question arising under provisions of the Act, to wit, whether the road is keeping its accounts and records in the form prescribed by the Commission or in any form that can be approved by the Commission. On the other hand counsel for the respondent contend that the subject matter of inquiry is manifestly political activities as such, and that the fact that the inquiry involves the expenditure of money is merely incidental, being in no sense the real object.

45 The paragraph itself, it will be seen, states the matter in this way: "What amount, if any" the said roads have subscribed, expended or contributed for the stated purposes. In form at least the inquiry is thus directed to the amount subscribed and expended for certain named purposes, some of them political, others not. It is certainly not in form directed to ascertaining what political or other activities the roads have been engaged in for it is confined to such activities as involve the expenditure of money and leaves at one side all political and other activities which do not involve such expenditure.

It is perhaps worthy of remark that the petition itself does not specify the use expected to be made of the information sought. It does not attempt to state in terms any question which the Commission conceives to have arisen under any provision of the Act. It does not state, for example, that the information is sought in connection with any inquiry as to rates, regulations or practices or that the inquiry is being conducted for the purpose of ascertaining whether the carrier's accounts are being kept in proper form. It does state that in the opinion of the Commission the information is necessary to enable it "to perform the functions for which it was created", and "to enable the Commission to discharge its duties and to execute and enforce the provisions of said Act," and "to inform the Commission as to the manner and method in which the business of the carrier is conducted, and to enable the Commission to obtain full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created;" but it does not point out what provision of the Act is to be executed and en-
46 forced with the assistance of the information which is being
sought. The petition proceeds upon the theory that under the Act as now amended the Commission has the right to institute an inquiry and summon witnesses concerning any matters relating to the manner in which the business is being conducted, even though the only use to be made thereof should be to enable the Commission to determine what recommendations it ought to make to Congress

with a view to further legislation; and this theory is also advanced and elaborated in the argument. Although in the Harriman Case, 211 U. S. 407, it was decided that the authority of the Commission to institute an inquiry and compel the testimony of witnesses was limited to those matters which were or might be the subject of a complaint under some provision of the Act and did not extend to matters of information merely, it is now contended that section 13 as amended by the Act of June 18, 1910 makes the decision in the Harriman Case inapplicable, and entitles the Commission to proceed by inquiry and the examination of witnesses in regard to any matter that concerns interstate commerce. On the other hand the respondent's counsel contend that the amendment has not enlarged the authority of the Commission to any such extent and that its authority to examine witnesses is still limited to cases in which it is proceeding for alleged violations of the Act, such violations as would be a proper subject for a complaint. The important new matter brought in by the amendment is that the Commission is now given authority on its own motion to institute an inquiry "as to any matter or thing concerning which any question may arise under any of the provisions of this Act or relating to the enforcement of any of the provisions of this Act." If respondent's counsel is correct these
words have added nothing to the power of the Commission.
47 A question is to be considered with respect to the effect of the
word "may". Does it mean any question which by any possibility might arise or does it mean any question that shall arise? Counsel for the Commission insists that it means any question that might conceivably arise whether it has already arisen or not. To give the amendment this construction would be to open the door to that sweeping and dangerous power alluded to by the court in the Harriman Case, a power which it held had not been conferred by the Act as it then existed and ought not to be considered as conferred in the absence of "explicit and unmistakable words." In view of the decision in the Harriman Case and having due regard to the grounds and reasons upon which it was based it seems necessary to deny to the amendment the full force claimed for it by the Commission. It does seem, however, that having been enacted after the decision in the Harriman Case the amendment was intended to enlarge the power of the Commission. It seems to this court that the words of the amendment must be held to give the Commission power to proceed by way of inquiry and examination of witnesses as to any matter or thing concerning which a question has arisen under any of the provisions of the Act or relating to the enforcement thereof: that the Commission is authorized thus to proceed touching any question which needs to be determined in order that the carrier may be required to comply with the provisions of the Act relating to the conduct of interstate commerce. The order ought to be sufficiently definite to show that it does relate to some matter concerning which a complaint is authorized to be made or concerning which a question arises under some provision of the Act. It is not contended by the Commission
that the subscribing or expending of money for any of the
48 purposes mentioned in the paragraph in question would con-
stitute a violation of any provision of the Act, but it is con-

tended that the amount paid for such purposes has a material bearing upon the question of reasonable rates, and furthermore that the manner in which the accounts of such expenditures are kept presents a question arising under the Act, especially when it appears, as assumed in some of the questions, that the accounts had been kept in such a way as to conceal or disguise the real nature of the expenditure. Take for example the first of the ten questions above quoted. This question is plainly directed to one of the matters specified in the twelfth paragraph of the order, namely, the amount paid for political campaign expenses, and contains the added element of a discrepancy between the true nature of the expenditure and the expenditure as charged. Supposing the Commission to have before it the carrier's account of expenditures for operating expenses and to wish to know whether such expenditures were incurred for the actual operation of the road or for some different purpose, would not this be a proper question to be put to enable the Commission to enforce the Act, which not only requires rates to be reasonable but requires the accounts to be kept in a proper form and one to be approved by the Commission? Unless we are to assume, contrary to the language of the order and to the form of the question, that the real object of the inquiry is to discover political activities of the carrier and not to discover the amount and real nature of the expenditures, the question would seem to be proper as being within the limits of the order itself and as presenting a question arising under provisions of the Act. Substantially the same may be said of the second, third and fourth questions. The fifth relates specifically
to a certain voucher in favor of a Trust Company for more
49 than $20,000 for special fees paid under the direction of the
witness as President. The question states that the examiners for the Commission had been refused all information regarding this voucher, and the witness was asked to state if he could what it was for. No objection was made to the question as assuming anything not true or not already established. Consequently it must be taken for granted that such a voucher did exist and that the examiners had been refused the information. The refusal to answer was put on the ground that it involved an inquiry under paragraph 12, which is equivalent to saying that the voucher was really for money expended for one of the purposes named in that paragraph but as to which purpose the witness declines to say. Does not this interrogatory present a question arising under a provision of the Act, viz., the provision in section 20 which requires the carrier in its annual report to state explicitly with regard to its "operating and other expenses?" When the carrier is required by the Act to furnish just such information as this, when the examiners have been refused the information, and when it may be clearly seen that the information may be necessary to enable the Commission to deal intelligently with the question of rates, and more especially when the account and voucher appear in a form that could not be approved by the Commission and could apparently be adopted only as a method of concealing the true character of the expenditure, how can it fairly be said that no question is presented arising under any provision of the

Act? The sixth interrogatory relates to the same voucher, and for the same reasons would seem to be proper. The seventh relates to another voucher but presents substantially the same situation.
50 The eighth relates to a specific expenditure of $34,800 in Alabama through a certain Agency in a campaign against rate reductions, and the ninth follows up the same matter. Both appear to be proper under the tests already applied. The tenth and last was only a general inquiry along the same line indicated by the more specific inquiries already examined.

It is difficult to avoid the conclusion that if the amendment of 1910 is to be given any force whatever it must be considered as having empowered the Commission to proceed by way of investigation and the examination of witnesses with respect to such matters as these, not because they involve the political activities of the carrier but because they involve the expenditure of its funds and so affect the question of the reasonableness of its rates and also involve its method of accounting under which by means of a false system ti would be possible to keep the Commission in ignorance of important elements in the problem with which it has to deal. The conclusion of the court is that when a case is presented from which it clearly appears that the information sought may well be needed by the Commission to enable it to enforce the existing provisions of the Act in respect to the duties which the Act has imposed upon carriers in the transaction of interstate commerce and not merely to inform the mind of the Commission to enable it to recommend future legislation, a question does arise under the provisions of the Act, entitling the Commission to institute an inquiry and examine witnesses and consequently, upon the refusal of the witness to answer, to invoke the aid of the Court. The distinction may perhaps still be drawn, as it was drawn in the Harriman Case, between the enforcement of the existing provisions of the Act which impose duties upon the carrier in respect to its methods of conducting interstate commerce, and
51 those other provisions which are intended to secure to the Commission information for the purpose of enabling it to recommend additional legislation; for as to the one matter Congress has already determined how the carrier shall operate in the conduct of its business and has imposed upon the Commission the duty of seeing that the law is complied with by the carrier, while as to the other matter the Commission is merely expected to inform itself for the purpose of proposing further legislation. It is not necessary in order to sustain the present petition to hold that as to mere matters of information the Commission is authorized to proceed by investigation and examination of witnesses for the case now in hand appears to present a situation within the first division.

An order will therefore be signed in accordance with this opinion.

WENDELL P. STAFFORD, *Justice.*

Decree Directing Respondent to Answer Certain Questions.

Filed October 11, 1916.

In the Supreme Court of the District of Columbia.

No. 34317.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
MILTON H. SMITH, Respondent.

The Interstate Commerce Commission, having filed its petition to the Judges of the Supreme Court of the District of Columbia, praying for an order requiring the above-named respondent, Milton H. Smith, to appear before said Commission at a time and place to be fixed by said Commission and to make full answers to certain
52 questions heretofore refused to have been answered by said Milton H. Smith as set forth in said petition, and to any and and all other pertinent questions relating to the subject-matter aforesaid which said Commission might require him to answer;

And an order having been duly made by the Honorable Wendell P. Stafford, Judge of said court, requiring said respondent to appear before the Supreme Court of the District of Columbia, and then and there to show cause why said petition should not be granted; and the said Milton H. Smith, having duly made answer to said petition and having on August 16, 1916, appeared by counsel before said Supreme Court of the District of Columbia; and the questions involved in said petition and answer having been fully argued by counsel for respective parties, and the court having been fully advised in the premises;

Now after reading and considering said petition, the answer thereto, and hearing argument of counsel for Petitioner and for Respondent;

It is ordered, adjudged, and decreed, that the said respondent, Milton H. Smith, be, and he is hereby directed to appear before the Interstate Commerce Commission, upon due notice by said Commission, at a time and place to be designated by it, and make full, true and complete answers and responses to the following questions heretofore propounded at a session held by the Interstate Commerce Commission in the City of Washington on the fourth day of May, 1916, and refused to be answered by said respondent at said hearing:

Mr. Folk: I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the State of Tennessee for political campaign purposes during the year 1915 and charged on the books of that carrier to operating expenses?

53 Mr. Folk: Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign pur-

poses and charged on the books of that carrier to operating expenses or to construction account?

Mr. Folk: Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

Mr. Folk: Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

Mr. Folk: Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

Mr. Folk: Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

Mr. Folk: Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000 issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

Mr. Folk: Mr. Smith, did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that State?

Mr. Folk: Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?

Mr. Folk: Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?

WENDELL P. STAFFORD, *Justice.*

October 11th, 1916.

54 *Petition for Appeal.*

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

#34317. Eq.

Interstate Commerce Commission, Petitioner,
vs.
M. H. Smith, Respondent.

To the Honorable Wendell Phillips Stafford, District Judge:

The above named, M. H. Smith, feeling aggrieved by the decree entered and rendered in the above entitled cause on October 11th, 1916, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith. And he prays that his appeal be allowed, that citation be issued as provided by law, and that a transcript of the record, proceeding, and documents upon which said proceeding was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of said court in such cases made and provided; and desiring to supersede the execution of such decree, said M. H. Smith here appears to execute bond in such amount as the court may require for such purpose and prays that with the allowance of the appeal a supersedeas be issued.

H. L. STONE,
HELM BRUCE,
E. S. JOUETT,
Att'ys for Defendant.

The appeal is allowed and shall operate as a supersedeas upon the petitioner filing a bond in the sum of $500.00 with sufficient sureties to be conditioned as required by law. Clerk may issue citation if same is not waived.

This November 27th, 1916.

WENDELL P. STAFFORD, *Justice.*

55 *Order Allowing Appeal, Fixing Bond and for Transcript.*

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Eq.

Interstate Commerce Commission, Petitioner,
vs.
M. H. Smith, Respondent.

This day came respondent, M. H. Smith, by counsel, and presented to the court his assignment of errors herein, a petition for appeal to the Supreme Court of the United States, and a supersedeas bond in the sum of Five Hundred ($500.00) Dollars with the Royal Indemnity Company as surety, and a stipulation of counsel as to the record to be copied on the appeal, and waiving the issue and service of citation; and it is now ordered that said several papers be, and they are hereby, filed; that said appeal be, and it is hereby, allowed, and that said bond be, and it is hereby, approved.

WENDELL P. STAFFORD, *Justice.*

Bond on Appeal.

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
M. H. SMITH, Respondent.

Know all men by these presents: That we, M. H. Smith, as principal, and the Royal Indemnity Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound in the sum of Five Hundred Dollars ($500) to be paid to the Interstate Commerce Commission, to which payment 56 well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally by these presents.

But this obligation is conditioned as follows:

Whereas lately at a term of the Supreme Court of the District of Columbia in a suit pending in the Supreme Court between the Interstate Commerce Commission as petitioner and M. H. Smith as respondent, an order and decree was made against the said respondent who has obtained an order allowing an appeal to be taken to the Supreme Court of the United States to reverse the decree aforesaid;

Now, Therefore, the condition of the above obligation is such that if the said M. H. Smith shall prosecute his appeal to effect and shall answer all damages and costs if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and effect.

M. H. SMITH,
ROYAL INDEMNITY COMPANY,
By HENRY G. BEDINGER, [SEAL.]
Att'y in Fact.

Approved:
WENDELL P. STAFFORD, *Justice.*

Attest:
O. K.
F. E. C., *Ass't Cl'k.*
6—807

STATE OF KENTUCKY,
County of Jefferson:

I, G. W. B. Olmstead, Notary Public for Jefferson County, State of Kentucky, hereby certify that M. H. Smith and H. G. Bedinger, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day and acknowledged that they signed, sealed and delivered said instrument, the said M. H. Smith for himself and the said H. G. Bedinger for and on behalf of the Royal Indemnity Company, as its attorney in fact, for the uses and purposes therein set forth.

Given under my hand and notarial seal this November 23, 1916. My commision expires January 23, 1918.

[SEAL.]

G. W. B. OLMSTEAD,
Notary Public, Jefferson Co., Ky.

#2252.

Power of Attorney.

Know all men by these presents: That the Royal Indemnity Company, a corporation of the State of New York, by C. F. Frizzell its 2d Vice-President, hath made, constituted and appointed and by these presents does make, constitute and appoint Henry G. 57 Bedinger its true and lawful Attorney-in-fact, at Louisville in the State of Kentucky, to make, execute and deliver on its behalf as Surety, bonds and undertakings, the penal sum of no one of which is in any event, to exceed Two hundred fifty thousand ($250,000) Dollars and to be given for the following purposes only, to wit: Guaranteeing the fidelity of persons holding places of public or private trust. Guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by States or municipalities in lieu of actual deposits; and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law required.

Such bonds and undertakings for said purposes, when duly executed by the aforesaid Attorney-in-Fact shall be binding upon the said Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

This appointment is made under and by authority of a certain By-Law duly adopted by the Board of Directors of the said Company at a regular meeting of that body duly called and held on the 24th day of January, 1911, a duly certified copy of which By-Law is hereto attached and is subject to revocation as therein provided.

In witness whereof, the Royal Indemnity Company has caused these presents to be signed by its 2nd Vice-President, and its corporate seal to be hereunto affixed duly attested by its Assistant Secretary, this 9th day of July 1915, at the city of New York, New York.

ROYAL INDEMNITY COMPANY,
By C. F. FRIZZELL,
2nd Vice-President.

Attest:
E. D. LIVINGSTON,
Assistant Secretary.

58 COUNTY OF NEW YORK,
State of New York, ss:

On this 9th day of July, 1915, before me personally appeared C. F. Frizzell 2d Vice-President of the Royal Indemnity Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the State of New York; that he is 2d Vice-President of the Royal Indemnity Company, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto as 2d Vice-President of said Company by like authority.

[SEAL.] LANGDON S. GARNAR,
Notary Public, Kings Co.

Cert. filed in N. Y. Co., #129.

Be it remembered, that at a regular meeting of the Board of Directors of the Royal Indemnity Company, duly called and held at the office of the Company, in the Borough of Manhattan, New York City, on the 24th day of January, 1911, a quorum being present, the following By-Law was duly adopted:

Article XI. Paragraph II.

"The President or a Vice-President shall have power and authority to appoint Assistant-Secretaries, Resident Vice-Presidents, Resident Secretaries, Resident Assistant Secretaries and Attorneys-in-Fact, and to give such appointees full power and authority to sign, and to seal with the Company's seal where required, all policies, bonds, recognizances, stipulations and all underwriting undertakings, and he may at any time in his judgment remove any such appointees and revoke the authority given to them." 59

STATE OF NEW YORK,
County of New York, ss:

I, E. D. Livingston, Assistant Secretary of the Royal Indemnity Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of the said Company and do hereby certify that the same is a correct and true transcript therefrom and of the whole of Article IX, Paragraph II, of said original By-Law.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Company, at the City of New York, this 9th day of July 1915.

E. D. LIVINGSTON,
Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, E. D. Livingston, Assistant Secretary of the Royal Indemnity Company, a corporation of the State of New York, do hereby certify that the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Royal Indemnity Company on the 9th day of July 1915, and that I have compared same with the original and that it is a correct transcript therefrom and of the whole of the original.

In witness whereof, I have hereunto set my hand and affixed the seal of said Company, at the City of New York, this 5th day of July 1916.

E. D. LIVINGSTON,
Assistant Secretary.

60 *Stipulation.*

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
M. H. SMITH, Respondent.

It is agreed between the parties hereto that in making up this record for the Supreme Court of the United States on the appeal by M. H. Smith, the clerk shall copy as the record the entire record herein except the transcript of evidence heard before the Commission which was filed as an exhibit with the petition. The parties agree that said exhibit may be omitted with the understanding that if either party deems the filing of such transcript to be important, it may be filed by such party as a supplemental record at any time before the hearing of the case.

Issue and service of citation on appeal are hereby waived.

JOS. W. FOLK,
Chief Counsellor Interstate Commerce Commission.
M. H. SMITH,
By E. S. JOUETT, *Att'y.*

Assignment of Errors.

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
M. H. SMITH, Respondent.

61 Now comes the respondent, M. H. Smith, in the above entitled cause and files the assignment of errors hereinafter set forth, upon which he will rely in the prosecution of his appeal to the Supreme Court in the above entitled cause from the decree made and entered by this Honorable Court on October 11th, 1916, to wit:

1. The court erred in that, after holding in its opinion that the order of investigation ought to be sufficiently definite to show that it related to some matter concerning which a complaint might be made, or concerning which a question arises under some provision of the Act to Regulate Commerce, it assumed that the order of investigation related to a question which had arisen under some provision of the Act to Regulate Commerce, when, in fact, the order of investigation referred to no such question.

2. The court erred in assuming as a basis of its opinion that the Commission had before it in said investigation the accounts of expenditures for operating expense, or the question of rates.

3. The court erred in taking, as one of the bases of its opinion, the assumption that the order of investigation related to the method of keeping accounts, since the order of investigation was not directed to that subject at all, and the assumption adopted by the court came merely from the form of a particular question propounded to the witness while on the stand.

4. The court erred in connection with the fifth question, relating to the voucher therein described, in adopting as the bases of its opinion the assumption, derived solely from the questions and answers, that the investigation "presents a question arising under a provision of the Act, namely, the provision of section 20, which required 62 the carrier in its annual report to state explicitly with regard to its operating and other expenses," when in fact no such question was suggested in the order of investigation.

5. The court erred in assuming as the basis of its opinion that "a question arising under the provisions of the Act" referred to in section 13 thereof and which the court held correctly must have actually arisen, can arise during a hearing by a mere interrogatory put to a witness without any reference in the order of investigation to the subject matter thereby suggested, whereas the Act meant that such a question, having previously arisen, must have been set out in

the order of investigation as the subject of the investigation; the error of the court in this respect being illustrated by the following quotation from that part of its opinion, where it was discussing interrogatory No. 5, relating to a specific voucher:

"Does not this interrogatory present a question arising under a provision of the Act, viz., the provision in section 20 which requires the carrier in its annual report to state explicitly with regard to its 'operating and other expenses'? When the carrier is required by the Act to furnish just such information as this, when the examiners have been refused the information, and when it may be clearly seen that the information may be necessary to enable the Commission to deal intelligently with the question of rates, and more especially when the account and voucher appear in a form that could not be approved by the Commission and could apparently be adopted only as a method of concealing the true character of the expenditure, how can it fairly be said that no question is presented arising under any provision of the Act."

6. In reaching its conclusion with reference to each of the other interrogatories set out in the petition the court committed the same fundamental error of assuming that the "question arising under the Act", which alone could give it jurisdiction, was a question—whether relating to rates or the proper keeping of accounts—which did not have to be set out in the order of investigation as the subject
63 matter thereof, but could arise, and give jurisdiction, in the midst of a hearing out of a mere interrogatory to a witness which suggested a question or subject matter within the jurisdiction of the Commission.

7. The court erred in holding, in effect, that under the order of the Interstate Commerce Commission, involved in this case, respondent, as a witness, could lawfully be required to answer any question that might be propounded to him as to expenditures for political purposes, or to keep out competition, or as to how such expenditures were charged in its accounts, because such questions might have a bearing upon the question of the reasonableness of the rates of the carriers involved, or the correctness of their accounts, when it did not appear that any question had arisen as to the reasonableness of such rates, or the correctness of such accounts, or that the Commission had ordered, or was making any investigation of such matters.

8. The court erred in holding that the amendment of 1910 of the Act to Regulate Commerce empowered the Interstate Commerce Commission, through its representative, in the proceedings involved and referred to in the petition herein, to require respondent, as a witness, to answer the questions propounded to him, because they involved the expenditures of the carrier's funds and so affected the question of the reasonableness of its rates, and also involved its methods of accounting, when it does not appear that the Commission had ordered, or entered upon, any proceeding of inquiry or investigation, either as to the reasonableness of carrier's rates, or as to the correctness or propriety of its accounting.

9. The court having held that the amendment of 1910 of
64 the Act to Regulate Commerce gives the Commission power to proceed by way of inquiry and examination of witnesses as to

any matter or thing concerning which a question has arisen under any of the provisions of the Act, or relating to the enforcement thereof, erred in then holding that the respondent, as a witness in such proceeding, could be compelled to answer questions as to expenditures for political purposes, or to keep out competition, and as to how they were charged in the carrier's accounts, on the ground that such questions might have a bearing upon the reasonableness of the carrier's rates, or its methods of accounting, when it did not appear that any question had arisen as to the reasonableness of its rates or its methods of accounting.

10. The court erred in holding, in effect, that the matter under investigation by the Interstate Commerce Commission in the proceeding involved herein, is to be determined by the question, or questions, asked of a witness by the representative of the Commission conducting the examination, and not merely by the order of the Commission instituting or directing the proceeding of inquiry and investigation.

11. The court erred in holding that the real object of the inquiry in the twelfth paragraph of the Commission's order, involved herein, was, not to discover political activities of the carrier, but to discover the amount and real nature of its expenditures.

12. The court erred in holding that it must be taken for granted that a voucher for over $20,000.00 for special fees, paid under the direction of the witness as President, existed, and that information concerning it had been refused to the Commission's examiners, because the question put to the witness states such to be the facts,
65 and was not objected to on the specific ground of assuming facts not proved.

13. The court erred in holding that the question put to the witness as to the voucher for over $20,000.00 for special fees, paid under the direction of the witness as President, presented a question arising under the provisions of Section 20 of the Act to Regulate Commerce, which requires the carrier in its annual reports to state explicitly with regard to its operating and other expenses, because it did not appear that any question had arisen, or was being investigated, as to the carrier's reports, annual, or otherwise.

14. The court erred in not dismissing the petitioner's petition, for the reason that the order of investigation failed upon its face to show that it related to any matter of thing concerning which a complaint was authorized to be made, or concerning which any question had arisen under any of the provisions of the Act to Regulate Commerce, or relating to the enforcement of any of the provisions of said Act.

15. The court erred in not dismissing the petition, for the reason that all the questions which the respondent, as a witness, refused to answer, were questions called for only under the twelfth paragraph of the Commission's order of investigation, and that the matters ordered to be investigated by that paragraph are not matters which the Commission is legally entitled to investigate.

16. The court erred in ordering and directing respondent, M. H. Smith, to appear before the Interstate Commerce Commission and to

answer the questions which in, and by, said order and decree, he is directed to answer.

17. And to each and every one of the questions which respondent is, by said order and decree, ordered and directed to answer, 66 the court erred in directing him to answer the same, and to produce the evidence therein called for.

18. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 1. I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the State of Tennessee for political campaign purposes during the year 1915 and charged on the books of that carrier to operating expenses?"

19. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 2. Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?

20. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 3. Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

21. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 4. Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

22. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 5. Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

23. The court erred in ordering and directing respondent to answer the following question, to wit:

"No 6. Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give 67 no information as to the purpose of this expenditure?

24. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 7. Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000 issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

25. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 8. Mr. Smith, did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that State?

26. The court erred in ordering and directing respondent to answer the following question, to wit:

"No. 9. Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?

27. The court erred in ordering and directing respondent to answer the following, to wit:

"No. 10. Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?

Wherefore respondent prays that the judgment herein be reversed.

68 *Designation of Record.*

Filed November 27, 1916.

In the Supreme Court of the District of Columbia.

No. 34317. Equity.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
M. H. SMITH, Respondent.

The clerk will please copy, and certify to the Supreme Court of the United States, as the record on appeal, the entire record in the lower court in the above styled cause, except the transcript of evidence of proceedings of investigation by the Interstate Commerce Commission, which transcript is made an exhibit with the petition in this proceeding; the parties, by stipulation, having agreed that said exhibit need not be copied as a part of the record.

H. L. STONE,
HELM BRUCE,
E. S. JOUETT,
Counsel for Respondent.

Service of the foregoing præcipe is hereby acknowledged this November 24, 1916.

JOS. W. FOLK,
Chief Counsel of Interstate Commerce Commission.

69 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 68, both inclusive, to be a true and correct transcript of the record, according to directons of counsel herein filed, copy of which is made part of this transcript, in cause No. 34317 in Equity, wherein Interstate Commerce Commission is Petitioner and Milton H. Smith is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of December, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: File No. 25,637. District of Columbia Supreme Court. Term No. 807. M. H. Smith, appellant, vs. Interstate Commerce Commission. Filed December 9th, 1916. File No. 25,637.

337 2

64th Congress } SENATE { Document
1st Session } { No. 461

LOUISVILLE & NASHVILLE RAILROAD CO.

HEARINGS

BEFORE THE

INTERSTATE COMMERCE COMMISSION

RELATIVE TO THE FINANCIAL RELATIONS,
RATES, AND PRACTICES OF THE LOUISVILLE
& NASHVILLE RAILROAD CO., THE NASHVILLE,
CHATTANOOGA & ST. LOUIS RAILWAY,
AND OTHER CARRIERS

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

64TH CONGRESS 1st Session | SENATE | DOCUMENT No. 461

LOUISVILLE & NASHVILLE RAILROAD CO.

HEARINGS

BEFORE THE

INTERSTATE COMMERCE COMMISSION

RELATIVE TO THE FINANCIAL RELATIONS,
RATES, AND PRACTICES OF THE LOUISVILLE
& NASHVILLE RAILROAD CO., THE NASHVILLE,
CHATTANOOGA & ST. LOUIS RAILWAY,
AND OTHER CARRIERS

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

SENATE RESOLUTION NO. 207.

[Submitted by Mr. Lea; reported by Mr. Fletcher.]

Resolved, That the manuscript submitted by the Senator from Tennessee [Mr. Lea] entitled "Hearings before Interstate Commerce Commission relative to financial relations, rates, and practices of the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railway, and other carriers," be printed as a Senate document.

Attest:

James M. Baker,
Secretary.

INDEX TO WITNESSES.

	Page.
A. S. Johnson	10
M. H. Taylor	13
W. E. Weldon	19
W. H. Maxwell	25
J. A. Harpole	29
John A. Hare	36
J. A. Clement	43
H. T. Stewart	52
Robert A. Elkins	56
Thomas J. Walsh	57
A. J. Argo	69
Jas. L. Cochran	72
G. R. McDade	76
F. E. Bryant	80
James Brett	81
E. O. Roberts	92
Jas. H. Koffman	95
J. V. Walker	98
Harry Williamson	105
John W. McKinney	114
Will H. Carleton	130
Henry C. Keene	239
Edwin F. Johnson	265
George W. Jones	295
N. F. Thompson	303
R. D. Pusey	303
A. R. Smith	315
Will H. Carleton (recalled)	322
A. R. Smith(recalled)	324
J. B. Harlan	329
Milton H. Smith	368

LOUISVILLE & NASHVILLE RAILROAD CO.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

In re financial relations, rates, and practices of the Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway, and other carriers. Docket No. 6319.

Luke Lea, complainant, *v.* Louisville & Nashville Railroad Co. et al., defendants. Docket No. 8488.

APRIL 27, 1916.

NASHVILLE, TENN.

Before Hon. Balthasar H. Meyer, chairman.

APPEARANCES.

Joseph W. Folk, Philip Doherty, and Harry Hull, appearing for the Interstate Commerce Commission.

John W. Gaines, jr., John A. Pitts, K. T. McConnico (Nashville, Tenn.), appearing for Luke Lea, petitioner.

Claude Waller (1000 Broad Street, Nashville, Tenn), appearing for Nashville, Chattanooga & St. Louis Railway Co.

Ed. S. Jouett (Louisville, Ky.), Henry L. Stone (Louisville, Ky.), John B. Keeble (Nashville, Tenn.), and W. A. Colston (Louisville, Ky.), appearing for the Louisville & Nashville Railroad Co.

PROCEEDINGS.

Chairman MEYER. Gentlemen, the commission has set for hearing this morning dockets Nos. 6319 and 8488. No. 6319 is an order of the commission embracing various points of investigation included in Senate resolution 153, and No. 8488 is a complaint by Senator Luke Lea against the Louisville & Nashville Railroad Co. and others. By a subsequent order of the commission these two dockets were consolidated for the purpose of hearing and investigation, and that is the hearing and investigation which has been called for to-day.

Gov. Folk, do you desire to make any statement?

Mr. FOLK. I suggest that the order of the commission in the two cases and the order of consolidation be made a part of the record. I hand to the stenographer copies of the orders.

(The orders are as follows:)

ORDER.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 20th day of March, A. D. 1916. No. 6319. In re financial relations, rates, and practices of the Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway, and other carriers.

ORDER OF AMENDMENT AND CONSOLIDATION.

Upon consideration of an order dated November 10, 1913, in the above-entitled proceeding, and for good cause shown:

It is ordered, That said order of November 10, 1913, be, and it is hereby, amended by adding after the last paragraph thereof the following:

It is further ordered, That, after the hearings and the investigation authorized by this proceeding, the commission may issue such order or orders in the matter as may be proper and necessary in the premises.

It is further ordered, That the case before the commission entitled "Docket No. 8488, Luke Lea *v.* Louisville & Nashville Railroad Co. et al.," be, and it is hereby, consolidated for hearing with this proceeding, upon one record, at such times and places as the commission may hereafter direct, that a copy of this order be filed in the record of said docket No. 8488, and that the parties thereto have due notice of all subsequent proceedings herein.

And it is further ordered, That copies of the original order herein and of this order be served upon all the parties to this proceeding and upon the parties to docket No. 8488.

By the commission.

[SEAL.]

——— ———, *Secretary.*

ORDER.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 10th day of November, A. D. 1913. Edgar E. Clark, Judson C. Clements, Charles A. Prouty, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, and John H. Marble, commissioners. No. 6319. In re financial relations, rates, and practices of the Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway, and other carriers.

The United States Senate having, by resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable—

First. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad.

Second. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been purchased, leased, controlled, or arrangements entered into with for the purpose of controlling by either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway.

Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part, and whether, under separate ownership, they would be competitive to the various points in their territories.

Fourth. Any other fact or facts showing, or tending to show, the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing, or tending to show, whether these relations restrict competition and maintain fixed rates.

Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louisville & Nashville Railroad, and what amount, if any, of stock, bonds, and other securities of the Nashville & Decatur Railroad and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad or any of its subsidiaries or holding companies.

Sixth. Whether the Nashville & Decatur Railroad, the Lewisburg & Northern Railroad, and the Louisville & Nashville Railroad serve the same territory in whole or in part, and whether, under separate ownership, these railroads would be competitive between various points in their territories.

Seventh. Any other fact or facts showing, or tending to show, the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing, or tending to show, whether these relations restrict competition and maintain and fix rates.

Eighth. Any fact or facts showing or tending to show (*a*) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict competition and maintain and fix rates; and (*b*) whether the lease of the Western & Atlantic Railroad by the Nashville, Chattanooga & St. Louis Railway from the State of Georgia, and the arrangement made between the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis Railway, by which the former uses the tracks of the said Western & Atlantic Railway, restrict competition, restrain trade, and determine and fix rates.

Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dock yards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly and restricts competition and determination and fixes rates.

Tenth. Any fact or facts showing or tending to show whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement.

Eleventh. What amount of stock, if any, the Atlantic Coast Line Co., or Atlantic Coast Holding Co. owns in the Louisville & Nashville Railroad, and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates.

Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plants of any of said railroads.

Thrteenth. (*a*) The number of free annual passes; (*b*) the number of free trip passes; (*c*) the number of every kind of free passes issued by each of said railroads each year since January 1, 1911, to members of legislative bodies and other public officials or at the request of members of legislative bodies and other public officials; (*d*) the total mileage traveled upon free passes issued under each of the above classifications; and (*e*) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads.

It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

It is further ordered, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents, and papers as the commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

And it is further ordered, That a copy of this order be served upon each of the following-named railroad companies, and upon any other companies which may hereafter be designated by the commission: Nashville, Chattanooga & St. Louis Railway; Louisville & Nashville Railroad Co.; Nashville & Decatur Railroad Co.; Lewisburg & Northern Railroad; Tennessee Midland Railroad Co.; Tennessee, Paducah & Alabama Railroad; Western & Atlantic Railroad; and Atlantic Coast Line Railroad Co.

By the commission:

[SEAL.] GEORGE B. MCGINTY, *Secretary*.

Mr. **Folk.** Now, I enter an appearance for the Interstate Commerce Commission; Mr. Philip J. Doherty and Mr. Harry Hull also appear with me.

Mr. **Jouett.** I appear for the Louisville & Nashville Railroad Co. and Col. Stone and Maj. Colston and Mr. Keeble; and Judge Claude Waller appears for the Nashville, Chattanooga & St. Louis Railway Co.

Chairman **Meyer.** If there are other persons who have not yet entered their appearance and wish to do so, they may do so during the day without taking the time to enter them now.

Mr. **McConnico.** In 8488 Mr. John W. Gaines, jr., John A. Pitts, and K. T. McConnico enter their appearance for Mr. Lea.

I want to say with respect to that No. 8488, that, as you have stated, that has been consolidated with the investigation that the Interstate Commerce Commission is making under the Lea resolution, and in pursuance of its own order, as I understand. In that case we filed a complaint that raised, or undertook to raise, a question of law to the effect that intrastate passes issued by these carriers were an undue discrimination against interstate commerce.

To conserve time and prevent any duplication of the record, we understand that the commission, of its own motion, has consolidated these two matters. I only desire to say for the complainant in 8488 at this time that, reserving to ourselves the right to except to the answer or parts of the answer filed in that matter for impertinency and irrelevancy thereafter, we will, at the conclusion of the proof offered in 6319, then offer such evidence as we may deem necessary in support of the complaint in 8488.

Mr. **Jouett.** In the consolidated actions the defendants desire to file a written motion to set aside the order of consolidation upon the ground that the controversies are between different parties and about different matters.

Chairman **Meyer.** That motion may stand of record, Mr. Jouett. As you probably know, that consolidation was quite in accordance with the established custom of the commission in other matters.

Mr. **Jouett.** And it is desired also to enter a motion to strike out from the proceedings and from any hearings the first 12 paragraphs and that each paragraph separately and each part of each paragraph in the Senate resolution.

I refer to the paragraphs that were incorporated into the commission's order carrying out the suggestion of the Senate resolution in docket 8488.

Chairman **Meyer.** That enumeration is in docket 6319.

Mr. **Jouett.** Yes; in 6319. Now, I think the understanding is that you will give us a chance to be heard on that later, inasmuch as there are some witnesses to be heard now upon the pass question involved in the thirteenth paragraph, to which we do not object, and the complaint of Senator Luke Lea.

Chairman **Meyer.** Inasmuch as what it is proposed to do here is in accordance with the well-established practice of the commission, Mr. Jouett, I think your motion should stand upon the record and your objections be noted. I am not sure that it would be expedient or proper for me alone, as one member of the commission, to listen to arguments. You, of course, will be afforded an opportunity to argue orally, or upon briefs, any of these questions you may wish to argue.

Mr. JOUETT. The same question would come up, then, upon objection to testimony relating to any of those first 12 paragraphs. I assume that you would hear argument upon that, would you not?

Chairman MEYER. As the questions arise, I would endeavor to rule upon them.

Mr. JOUETT. We would like very much to be heard upon this motion, and it is on the ground that it is beyond the jurisdiction of the commission; but, of course, we abide by your honor's ruling, necessarily.

Chairman MEYER. As you know, Mr. Jouett, the commission has done various things in administrative matters and otherwise relating to the manner in which the carriers conduct their business; and, as you know, the commission is charged with the duty of keeping itself advised with respect to the manner in which the carriers conduct their business, and if any specific reference to any provision of the law were needed to justify this kind of an investigation, I imagine that reference would be sufficient. Do I understand that is one of the points you desire to argue?

Mr. JOUETT. Yes. Just to answer that suggestion, our idea is that the proceeding can not be carried on under section 12 except under a complaint by some third party or in an investigation instituted by the commission upon its own motion, and that in either event, when there is a complaint or an investigation of that sort, where and where only verbal evidence is taken and testimony is heard, that it must be with regard to some specific violation of the statute or must be with reference to something that would be subject to a complaint, and therefore that these first 12 paragraphs relating to intrastate questions and to legislative and political activities do not come within the purview of the statute, and hence that in this particular kind of a complaint, where and where only evidence is heard, there is not anything as to those 12 paragraphs that is within the jurisdiction of the commission.

Chairman MEYER. May I suggest that the proceeding set for today is an investigation by the commission on its own motion. Senate resolution 153 was the occasion, but the proceeding is one on motion of the commission on its own initiative.

Mr. JOUETT. Just to make my point clear without arguing it, because I am not going to detain you with an argument, because the commission has distinctly decided those are the only two kinds of hearings at which testimony can be offered, namely, upon a complaint or upon an investigation instituted by the commission upon its own motion. I do not refer to an investigation made under section 20 by its examiners, but upon a hearing in court, where witnesses are offered, and in that kind of a hearing before the commission, as is clearly shown in the Harriman case, there must be a complaint alleging a specific violation of the act already admissible in regard to a matter which might be the subject of a complaint alleging specific violation of the act, and these 12 paragraphs, inasmuch as the investigation ordered by the commission is confined to these 13 paragraphs, it is limited not to a general investigation, but to these 13 paragraphs, and if 12 of them are beyond the jurisdiction of the commission and do not relate to any violation of the act to regulate commerce, then we think it is clearly beyond the jurisdiction of the commission to consider them in this sort of a complaint.

Chairman MEYER. I think you have made your objections clear upon the record, Mr. Jouett, and with the understanding that at some subsequent time you may file briefs, or possibly argue the question orally, we will proceed with the taking of testimony.

Gov. Folk, whom do you call as your first witness?

Mr. FOLK. A. S. Johnson.

Mr. JOUETT. To make the record clear, I desire to state that we object and except to the introduction of any testimony relating to the first 12 paragraphs set forth in the Senate resolution.

Chairman MEYER. The objection is noted of record.

A. S. JOHNSON was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Where do you live?

Mr. JOHNSON. Jackson, Madison County.

Mr. FOLK. Are you a member of the present General Assembly of the State of Tennessee?

Mr. JOHNSON. No.

Mr. FOLK. Were you a member of the last general assembly?

Mr. JOHNSON. Yes, sir; 1913.

Mr. FOLK. In what capacity—senator or representative?

Mr. JOHNSON. Representative?

Mr. FOLK. Did you have an annual pass?

Mr. JOHNSON. Yes, sir; I did during the legislature.

Mr. FOLK. Will you state whether it was customary for senators or representatives to have annual passes?

Mr. JOHNSON. Yes, sir; I suppose it was.

Mr. FOLK. Do you know of any who did not have annual passes?

Mr. JOHNSON. No, sir; I do not. I believe now that I did hear of members from Shelby and maybe from Hamilton Counties who said they did not have any pass.

Mr. FOLK. Did you secure trip passes?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. For friends and constituents?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. From what railroad or railroads did you have an annual pass?

Mr. JOHNSON. Well, I had one from the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad, the Tennessee Central, Mobile & Ohio, and the I. C.

Mr. FOLK. Any others?

Mr. JOHNSON. No, sir; I did not have any others. I suppose I could have gotten them if I had wanted them.

Mr. FOLK. After your legislative term ended, did you continue to have these favors from these carriers?

Mr. JOHNSON. No, sir; I did not ask for it.

Mr. FOLK. You did not?

Mr. JOHNSON. No; I was glad to get rid of it, really.

Mr. FOLK. The passes expired with your term of office, did they?

Mr. JOHNSON. Yes, sir.

Mr. Folk. During the year 1913 you requested and obtained from the Nashville, Chattanooga & St. Louis Railway alone——

Mr. Johnson. I did not understand the first part of that question.

Mr. Folk. During the year 1913 you requested and secured from the N., C. & St. L. trip passes to the number of 321, representing a mileage of a value of $3,086.17?

Mr. Johnson. Yes, sir.

Mr. Folk. That is correct, is it?

Mr. Johnson. I do not know how many, but I got as many as I wanted.

Mr. Folk. Did these favors cause you to be unfriendly to the railroad?

Mr. Johnson. No, sir.

Mr. Folk. They did not?

Mr. Johnson. No, sir.

Mr. Folk. I show you here a letter—a copy of a letter purporting to be signed by you, addressed to Hon. D. G. Hudson, Nashville, Tenn., and ask you if you recall writing such a letter?

Mr. Johnson. No, sir; I did not write any such letter as that.

Mr. Folk. You did not?

Mr. Johnson. No, sir. No, sir; I sure did not. Let me read it again.

Mr. Folk. Look at it again. Do you know Mr. Hunt, the gentleman of whom you spoke?

Mr. Johnson. Yes, sir; I know Mr. Hunt very well, but I did not write this letter at all.

Mr. Folk. Did you ever request a pass for Mr. Hunt?

Mr. Johnson. I think I have, but I never made any such promise as that at all. I suppose they have the original letter, or ought to have it.

Mr. Folk. We will produce the original.

Mr. Johnson. Yes; so I can tell whether it is my handwriting or not.

Mr. Jouett. With reference to this testimony, Mr. Commissioner, as to who have received passes and who have not, we desire to enter an objection upon the ground that it is wholly immaterial and not really covered by the Senate resolution. Your honor knows that the custom of issuing passes, and issuing passes to officials, has grown up in this country and been in vogue for perhaps a hundred years in every State in the United States. Now, the examiners of the commission have examined all of the pass records of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway. The commission already has all of this data. The commission is not charged, it seems to us, with questions relating to the internal arrangements of the States. Its only interest can be to determine whether or not the quantity or the number of intrastate passes that have been issued is a burden upon interstate commerce. The only other ground alleged in the complaint is that passes were used as a sort or rebate to secure interstate business.

Now, there is no attempt to show anything of that sort. Nothing of that sort will be shown. This evidence is all before the commission, and we desire to object on behalf of the railroads—not that it makes any difference whatever to the railroads—they are no more in love with the habit of giving passes than the commission; but, as I say, that custom has grown up all over the country everywhere, and is being followed and has been followed; and we think it is unjust to a great many people in this State to prove their names, to prove those facts here, with a view to holding them up to some sort of odium before the public for some purpose that we can not imagine could interest the commission.

Now, we think that the evidence that you have already got of the number of passes amply covers the requirement of your own order, which, of course, I understand is not helped any by the Senate resolution, the Senate resolution being merely a suggestion, and we do not believe it serves any good purpose and that it is a great injustice to a great many men who are just as honorable as any other men in this State, who have follen into this habit that everybody has had all over the United States; and it is a great injustice to single them out and expose the names of people who have received passes when it can not cut any figure or have any effect upon what the commission may or may not do. If this hearing is to serve any purpose it is presumably to enable the commission to enter an order, not an order relating to the morals of the country—it has no such power—but an order with reference to the effect of the quantity of intrastate passes that may be issued upon interstate commerce. Is or is it not a burden upon interstate commerce? If it is, let the commission enter a general order that will apply to every State in the Union, and the railroads of the country will join you heartily in it. But this attempt here to expose the names of the people who in the State of Tennessee have used railroad passes, it seems to me, ought not to be countenanced by the commission.

Chairman **Meyer**. Your objection is noted of record, Mr. Jouett, and the examination may proceed.

Mr. **Folk**. Mr. Jouett, subpœnas duces tecum were served upon the Louisville & Nashville Railroad and, I believe, upon the Nashville, Chattanooga & St. Louis Railway, asking for the production of the originals of these letters.

Mr. **Jouett**. That was only served yesterday and it was utterly impossible to get the papers here, and it was not returnable until to-morrow. I do not know what will be done about it.

Mr. **Folk**. But there is no disposition to resist obedience to that subpœna?

Mr. **Jouett**. I do not know about that, Gov. Folk, but I would think not; that would be my judgment; but I am not in a position to state.

Mr. **Colston**. So far as it relates to any matter within the investigating power of the commission, we have no objection to compliance with the subpœna, and as I stated to you this morning, Governor, we will endeavor to comply with it to the fullest extent, and will get here to-morrow all those records that we can have here. There are some records that it is physically impossible to get here, as I explained to you, and I would like to confer with you later as to just what you will expect us to bring here to-morrow morning.

Mr. **Folk**. That is all, Mr. Johnson.

(Witness excused.)

M. H. **Taylor** was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk**. Where do you live?

Mr. **Taylor**. Jackson, Madison County.

Mr. **Folk**. Are you a member of the present General Assembly of the State of Tennessee?

Mr. **Taylor**. I am not.

Mr. **Folk**. Were you a member of the last general assembly?

Mr. **Taylor**. I was.

Mr. **Folk**. How long have you been a member or were you a member of the General Assembly of the State of Tennessee?

Mr. **Taylor**. Only one term.

Mr. **Folk**. Two years?

Mr. **Taylor**. Two years.

Mr. **Folk**. Mr. Taylor, not for the purpose of casting any odium but merely to ascertain the extent of the use by legislators of these transportation favors by carriers, I will ask you if you had an annual pass over the Louisville & Nashville Railroad while you were a member of the legislature?

Mr. **Taylor**. I did.

Mr. **Folk**. What other railroads did you have annual passes over?

Mr. **Taylor**. I had one over the N. & C., the Tennessee Central, the Southern, Mobile & Ohio, and I. C.

Mr. **Folk**. Did those passes expire with your term of office?

Mr. **Taylor**. They did.

Mr. **Folk**. While you were in office as a legislator, you also requested passes for others, did you not?

Mr. **Taylor**. I did.

Mr. **Folk**. According to the record of the carriers—that is, of the N., C. & St. L.—during the year 1913, you requested 671 passes, representing a mileage of a value of $6,373.71; is that correct, according to your recollection?

Mr. **Taylor**. I do not know; I kept no record of them.

Mr. **Folk**. You asked for a large number of passes, did you not?

Mr. **Taylor**. I did.

Mr. **Folk**. I show you a list of passes over the N., C. & St. L., requested by you during the year 1913, and will ask you to examine this list and state your opinion of its accuracy. It shows a total of 671 passes, all of which passes were used, and the mileage traveled on them representing $6,373.71.

Mr. **Waller**. I think the governor is rather testifying himself in regard to this matter, and there has been no proof that 671 passes were asked for, and there has been no proof that they have all been used, and there has been no proof of their value, and I do not think it is exactly fair for the counsel to assume facts in his question as having been proved when there has been no proof in regard to them.

Mr. **Folk**. I did not suppose that counsel would dispute that fact for——

Mr. **Waller**. Well, I do not dispute, because I do not know.

Mr. **Folk**. Because these facts were taken from the records of the N., C. & St. L. Railway, and the record shows that the passes were used, and it was merely for the purpose of saving time that I embraced in my question the assumption of the fact. If you object to it, however, of course we will prove it.

Mr. WALLER. I do not know, of course, what the facts are, as to how many were issued, or who rode on them, or what the mileage is, but I do think it is improper for counsel to assume that such is the case, and there is no proof to that effect, although I do not want to be understood as disputing the fact, because, as I say, I do not know.

Mr. FOLK. We shall be very glad to prove the fact, if proof is called for.

Mr. COLSTON. During the pause, Gov. Folk, you asked me with respect to a subpœna duces tecum, and I understood your inquiry had reference to the subpœna duces tecum with reference to pass matters.

Mr. FOLK. I had that in mind particularly when I asked the question.

Mr. COLSTON. That is what I addressed my answer to, with the understanding that we did not interpose any objection to the production of the records covering passes. There is another subpœna duces tecum with respect to which we will have to reserve decision.

Mr. FOLK. Very well.

Mr. TAYLOR. I suppose the list is correct. I can recall a great many names, and some I do not.

Mr. FOLK. Now, these annual passes you had over the lines you have mentioned, were they used by you?

Mr. TAYLOR. Yes, sir.

Mr. FOLK. Extensively or otherwise?

Mr. TAYLOR. Not very extensively, except coming to Nashville and returning was about the only time I used them

Mr. FOLK. Were those passes sent to you after you had been sworn in as a member of the legislature, or did you receive them before you took the oath of office?

Mr. TAYLOR. Well, I do not recall now. I think there were one or two, perhaps, I received before I was sworn in and others I received afterwards.

Mr. FOLK. Did you request these annuals?

Mr. TAYLOR. No.

Mr. FOLK. They were sent to you without request?

Mr. TAYLOR. Yes.

Mr. FOLK. Mr. Taylor, do you think the practice of giving passes to members of the legislature is a good practice or a bad practice, from the public standpoint?

Mr. TAYLOR. Well, from a personal standpoint, I do not think it is a good one.

Mr. FOLK. Why not?

Mr. TAYLOR. Well, it seems to me it is a burden on the railroads that should not be expected.

Mr. FOLK. Does it cause the legislators who receive passes to be unfriendly to the railroads?

Mr. TAYLOR. No; it should not.

Mr. FOLK. It rather causes them to feel more kindly, does it not?

Mr. TAYLOR. Well, it had no particular influence with me, because I have always felt kindly toward the railroads.

Mr. FOLK. You have always felt kindly?

Mr. TAYLOR. Yes.

Mr. FOLK. What is your business or profession?

Mr. TAYLOR. I am at present in the insurance and real estate business.

Mr. FOLK. If you had a case against a railroad, would you object to trying that case before a jury every member of which had a pass over the railroad defendant in your case?

Mr. TAYLOR. Well, that is a question that I have not had an opportunity to think about. I have never had a case yet——

Mr. FOLK. Or would you prefer to try your case before a jury no member of which had a pass over the railroad which you were suing?

Mr. TAYLOR. That depends on the character of the men.

Mr. FOLK. You think there are some men whom you would not object to if every member of the jury had a pass over the railroad that you were suing?

Mr. TAYLOR. I would not.

Mr. FOLK. Do you know how these trip passes that you secured over the N., C. & St. L. were obtained; from whom did you secure them?

Mr. TAYLOR. Well, I would just send a list to the office; I do not know how they were issued.

Mr. FOLK. To what office?

Mr. TAYLOR. To the N. & C., and I always made out a list of those whom I was requesting for.

Mr. FOLK. Did you send it to any particular person?

Mr. TAYLOR. Well, sometimes I would address it, perhaps, to some man connected with the office and then I have sent them down by other people, and I do not know whom they were delivered to.

Mr. FOLK. Do you know Mr. D. G. Hudson?

Mr. TAYLOR. I know him very well; yes, sir.

Mr. FOLK. Do you know whether or not he had the distribution of passes either for the L. & N. or for the N., C. & St. L.?

Mr. TAYLOR. No, sir; I do not.

Mr. FOLK. Do you know Mr. McConnell?

Mr. TAYLOR. I do.

Mr. FOLK. Do you know whether he acted in that capacity for either of these roads?

Mr. TAYLOR. I do not know whether he issued any passes or not.

Mr. FOLK. Well, were these 671 passes that you obtained in 1913, all secured by requests signed by you and sent down to the office of the N., C. & St. L.?

Mr. TAYLOR. I do not know whether all that list was secured or not. I know there were a great many that were not secured, and I suppose they are on the same list.

Mr. FOLK. Do you mean you made requests that were not honored?

Mr. TAYLOR. Yes, sir.

Mr. FOLK. You had 671 honored. Can you approximate about how many requests were not honored?

Mr. TAYLOR. No, sir; I could not.

Mr. FOLK. What were your relations with the N., C. & St. L. that caused you to feel justified in asking the N., C. & St. L. Railway for so many passes?

Mr. **Taylor.** Well, I had no intimate relation with them; I had no reason to expect it when I asked them.

Mr. **Folk.** You had no reason other than the fact that you were a member of the legislature?

Mr. **Taylor.** And it was the custom.

Mr. **Folk.** It was the custom?

Mr. **Taylor.** Yes.

Mr. **Folk.** That is all.

Cross-examination:

Mr. **Waller.** In regard to these passes that you have been asking about, your constituents would write to you and ask you to secure transportation for them?

Mr. **Taylor.** It was all done on request to me; yes, sir.

Mr. **Waller.** They would want to come to Nashville during the legislature?

Mr. **Taylor.** Yes.

Mr. **Waller.** And as a general rule they were coming to Nashville, were they not?

Mr. **Taylor.** Yes.

Mr. **Waller.** That had been a custom for many years, as you understood it, had it not?

Mr. **Taylor.** As far back as I can remember.

Mr. **Waller.** And the custom was proceeded with in 1913. Now, how long was the legislature in session in 1913?

Mr. **Taylor.** Well, I think I served about nine months that year.

Mr. **Waller.** They had several extra sessions, did they not?

Mr. **Taylor.** Yes; and they kept us on duty without an extra session and without pay.

Mr. **Waller.** Now, Mr. Taylor, have you any idea of how many of these persons would have made those trips if they had not had transportation?

Mr. **Taylor.** Well, I don't suppose there would have been more than one-fourth of them; there may have been more than that, too.

Mr. **Waller.** As a general rule, those people took that occasion to get a trip up to Nashville while the legislature was in session?

Mr. **Taylor.** A large number of them would never have come to Nashville if they did not have the pass.

Mr. **Waller.** They knew there had been a custom of that sort?

Mr. **Taylor.** Yes.

Mr. **Waller.** And then they sent their requests to you and then you sent them to the railway?

Mr. **Taylor.** Yes.

Mr. **Waller.** And they were all intrastate passes and no interstate passes?

Mr. **Taylor.** No; I never used one and never asked for one.

Mr. **Waller.** Now, was there any bargain between you and those constituents that you got passes for?

Mr. **Taylor.** No, sir; I did not advertise the matter, because I tried to avoid them as much as possible.

Mr. **Waller.** You did not make them make you any promises in order to get them?

Mr. **Taylor.** No.

Mr. Waller. Did the railroad ask you to make any promises when they furnished them to you?

Mr. Taylor. They never have requested anything of me.

Mr. Waller. Now, is it not true that members of the legislature who had the reputation of being very hostile to the railroad interests got transportation also?

Mr. Taylor. Yes, sir.

Mr. Waller. In other words, there was a custom which was followed as to all members of the legislature whether they were friendly or not friendly?

Mr. Taylor. So far as I knew.

Mr. Waller. That is all.

Redirect examination:

Mr. Folk. You spoke of using these annual passes on your various trips from Jackson to Nashville and return. Did you collect mileage from the State for these trips also?

Mr. Taylor. We were paid mileage one time, you know.

Mr. Folk. You collected mileage for one of the trips taken on these passes?

Mr. Taylor. Yes.

Mr. Folk. Now, you spoke of Mr. Dorsey Hudson. I understood you to say you had made no request of him for any pass.

Mr. Taylor. No; you misunderstood me.

Mr. Folk. Well, what about it?

Mr. Taylor. I said I did not know he had anything to do with the issuing of passes. I have made requests through him; that is, I have addressed letters to him.

Mr. Folk. I show you here a copy of a letter purporting to be signed by you addressed to Mr. Dorsey Hudson, and ask you whether or not you wrote the original of that letter?

Mr. Taylor. Yes, sir; I think I did.

Mr. Jouett. Let me see that, Mr. Folk, will you?

Mr. Folk. Yes [handing letter].

Chairman Meyer. Mr. Jouett, do you wish to ask this witness any questions?

Mr. Jouett. No.

Chairman Meyer. Gov. Folk, is that all?

Mr. Folk. These gentlemen desire to see the letter before reading it into the record.

Mr. Taylor. What is the date of that letter?

Mr. Folk. December 24, 1912. Do you mind reading that out loud so that the stenographer can hear you?

Mr. Taylor (reading):

JACKSON, TENN., *December 24, 1912.*

Mr. DORSEY HUDSON,
Nashville, Tenn.

DEAR SIR: I am writing you asking for transportation to Nashville for myself and for Mr. A. S. Johnson, both representatives from Madison. We expect to be in Nashville the latter part of next week in order to be in touch with the outline of the organization of the legislature before that body shall meet. I am requested also to ask if the favor can be granted that you send transportation to Mr. J. D. Hunt, R. A. Harris, and J. D. Blackman to Nashville and return. These parties are particular friends and are anxious to be in Nashville at the time of the assembly of the legislature, as they are interested in matters coming before the legislature, and would like to be on the ground before the organization of same. I trust I am not asking too much just at this time, and will appreciate any favor that it is in your power to grant, and assuring you in advance that any favor granted will be thankfully received and appreciated by Mr. Johnson and myself. Wishing you the season's greetings, I beg to remain,

Very truly, yours,

M. H. TAYLOR.

Mr. FOLK. Did a bill to prohibit the issuance of free passes in the State by railroads come up during your term as legislator?

Mr. TAYLOR. Yes, sir; there was a bill introduced.

Mr. FOLK. Did you vote for it or against it?

Mr. TAYLOR. I voted against it.

Mr. FOLK. Against it?

Mr. TAYLOR. I had my reasons for it.

Mr. FOLK. What were your reasons?

Mr. TAYLOR. I thought it was a political move on the part of certain people and that I did not think anything would be accomplished by it.

Mr. FOLK. You stated a while ago that you thought the pass system was a bad thing.

Mr. TAYLOR. Yes, sir.

Mr. FOLK. And that it should be corrected, as I understood you?

Mr. TAYLOR. Yes, sir.

Mr. FOLK. Yet you had an opportunity, as a legislator, to vote for a bill correcting the pass evil in Tennessee and you voted against it?

Mr. TAYLOR. I did.

Mr. FOLK. Was the fact that you had received 671 passes of the value of $6,373——

Mr. WALLER. I must request that you do not interpolate facts that have not been proved.

Mr. FOLK. If you do object, I will not mention the amount.

Mr. WALLER. I do; because I do not think it is fair to intimate facts have been proved which have not been proved.

Mr. FOLK. We will bring that out by our examiners. Did the fact that you had received a large number of passes from the railroads influence you in any way in determining how you should vote on the free-pass bill?

Mr. TAYLOR. Ask the question again.

Mr. FOLK. You said you voted against the free-pass bill?

Mr. TAYLOR. I did.

Mr. FOLK. Did you vote against it because you had received so many free passes yourself?

Mr. TAYLOR. No.

Mr. FOLK. That had nothing to do with it?

Mr. TAYLOR. That had nothing to do with it, because I was not benefitted by the issuance of any pass.

Mr. FOLK. Except the annuals you received yourself?

Mr. TAYLOR. Yes; I meant any trip passes.

Mr. FOLK. All the platforms of the political parties in Tennessee declared against the use of the free pass, did they not, during the year that you ran for the legislature?

Mr. TAYLOR. I think they did, as well as I remember.

Mr. FOLK. Yet when a bill to prohibit free passes came up in the legislature it was defeated?

Mr. TAYLOR. Yes, sir.

Mr. FOLK. And you voted against it because you thought there were politics behind the bill to prohibit free passes?

Mr. TAYLOR. It seemed that way to me.

Mr. WALLER. Just let me ask you a question, Mr. Taylor, in regard to political platforms: Do you recall when the first plank was put in the platform of this State by either of the parties with regard to free transportation?

Mr. TAYLOR. No, sir; I do not. I know it had been the custom of every legislature to——

Mr. WALLER. Was it not the first time Gov. Patterson was nominated?

Mr. TAYLOR. I do not recall.

Mr. WALLER. You were not up here in those days?

Mr. TAYLOR. No.

Mr. WALLER. You were not familiar with the conditions at the capitol at that time?

Mr. TAYLOR. No; I never attended the legislature until I was elected a member.

Mr. FOLK. If you were a member of the legislature now, would you vote for the anti-free-pass bill?

Mr. TAYLOR. Well, I think I would.

Mr. FOLK. You think you would?

Mr. TAYLOR. Yes.

(Witness excused.)

W. E. WELDON was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Where do you live?

Mr. WELDON. Paris, Tenn.

Mr. FOLK. What is your occupation?

Mr. WELDON. Life insurance.

Mr. FOLK. Have you ever been a member of the General Assembly of the State of Tennessee?

Mr. WELDON. I was in 1913.

Mr. FOLK. Did you attend the sessions regularly?

Mr. WELDON. I did.

Mr. FOLK. Do you recall a bill to prohibit the issuance of free passes by railroads in Tennessee coming up?

Mr. WELDON. I think so.

Mr. FOLK. Did you support that bill or oppose it?

Mr. WELDON. I think I opposed it.

Mr. FOLK. Did you have an annual pass from the N., C. & St. L. Railway?

Mr. WELDON. I did.

Mr. FOLK. Did you have an annual pass while you were a member of the legislature from the Louisville & Nashville Railroad?

Mr. WELDON. I did.

Mr. FOLK. What other railroads?

Mr. WELDON. I think I had one on the Tennessee Central and the Southern; I am not sure whether the Tennessee Central passed me for the full year or not, but I had one on the Tennessee Central.

Mr. **Folk**. Do you recall that you requested a large number of trip passes from the N., C. & St. L. during the year 1913?

Mr. **Weldon**. I do.

Mr. **Folk**. In fact, according to the records, 423; is that approximately correct?

Mr. **Weldon**. I have no——

Mr. **Waller**. Now, Mr. Folk, you have promised that you would not interpolate facts which have not been proven.

Mr. **Folk**. If you listened to the question I think you would not have objected. I am asking if this——

Mr. **Waller**. The objection is taken because I did listen.

Mr. **Folk**. I am asking the witness whether he could testify that the number I gave was approximately correct. I am asking for testimony from this witness.

You say you asked for a large number?

Mr. **Weldon**. I said I did; but I have no idea how many.

Mr. **Folk**. More than 300?

Mr. **Weldon**. I could not say; I never kept a record of them.

Mr. **Folk**. Do you know Mr. D. G. Hudson?

Mr. **Weldon**. I do.

Mr. **Folk**. Did you request any N., C. & St. L. passes from Mr. Hudson?

Mr. **Weldon**. I think I did.

Mr. **Folk**. Was he the distributing agent of the N., C. & St. L. passes for the legislature, as far as you know?

Mr. **Weldon**. Well, I do not know that he was exclusively; no. I knew he was in the office down there.

Mr. **Folk**. How would you obtain the free passes from the N., C. & St. L.?

Mr. **Weldon**. Well, I would usually write a note requesting the office down there, usually Mr. Hudson, or through the office, some one there, or perhaps send them down by a porter, and passes were always sent to me.

Mr. **Folk**. Did you feel under any obligation to the N., C. & St. L. Railway for the passes furnished you by that railroad?

Mr. **Weldon**. I did not.

Mr. **Folk**. None whatever?

Mr. **Weldon**. No, sir.

Mr. **Folk**. Did you ever say to Mr. Hudson or anyone else that you would serve him in any way that you could?

Mr. **Weldon**. I possibly would.

Mr. **Folk**. I show you a letter purporting to be signed by yourself, Mr. Weldon, addressed to Mr. Hudson, of date May 3, 1913, and will ask you whether or not you wrote the original of that letter?

Mr. **Weldon**. I guess I wrote that letter. I usually, when I write a letter to a friend, ask him if I can serve him in any way to let me know—not only to railroads, but to everyone else.

Mr. **Folk** (reading):

NASHVILLE, *May 3, 1913.*

D. G. HUDSON.

DEAR SIR: I wish you would get me pass for Mary Weldon over T. C. and Southern to Bristol and return from Nashville. We will want to leave Nashville May 19. If you can do this, I surely will appreciate and will be yours to serve you when I can.

Yours, truly,

W. E. WELDON.

Mr. **Weldon**. That was a trip pass for my daughter to Bristol.

Mr. **Folk**. I show you another letter, Mr. Weldon, addressed to D. G. Hudson, dated April 18, 1913, and ask you whether or not you wrote the original of that?

Mr. **Weldon**. I guess I did. If I could see the original, I could tell, but I should have no objection to writing such a letter as that.

Mr. **Folk** (reading):

> Mr. D. G. Hudson.
>
> My Dear Sir: I want you to know how much I appreciate all the favors you have shown me in every way while I have been in the city, and if at any time I can be of service to you I shall take great pleasure in trying to return, in my humble way, what I can.
>
> With my best wishes, I am, yours,
>
> W. E. Weldon.

Both of these letters are written from Nashville on the letterhead of the house of representatives.

Mr. **Weldon**. I was in Paris at the time, but the letterhead bore the Nashville date. I still have some of that old paper at home yet.

Mr. **Waller**. What was the date of that letter, Mr. Folk?

Mr. **Folk**. The last one was April 18, 1913. So you did feel under some obligation by reason of these passes that you received, did you not?

Mr. **Weldon**. I would feel under obligation to any man that has conferred a favor on me in a certain way.

Mr. **Folk**. There was some sentiment of gratitude in your heart, was there not?

Mr. **Weldon**. Not especially for the issuance of a pass; no—some sentiment of friendliness between Mr. Hudson and myself.

Mr. **Folk**. What was the nature of that friendliness; were you engaged in business in any way together?

Mr. **Weldon**. No; but we have known each other quite a while—a long time.

Mr. **Folk**. Do you consider the pass system a good or a bad thing from the standpoint of the public?

Mr. **Weldon**. I do not consider it very bad.

Mr. **Folk**. You do not think it is very bad?

Mr. **Weldon**. No.

Mr. **Folk**. In fact, you think it is all right, from the standpoint of the public, for railroads to issue passes to legislators and to issue passes without limit at the request of legislators?

Mr. **Weldon**. If they see fit to do so.

Mr. **Folk**. You do not think that the public has any right to question what the railroads do if the railroads desire to issue these passes to these legislators?

Mr. **Weldon**. I look at the railroad as a personal matter, like I would my own matter. If I should desire to give a man anything, I think that is my business.

Mr. **Folk**. You think the operation of a railroad is the private concern of those that run the road, do you?

Mr. **Weldon**. I think so.

Mr. **Folk**. Did you ever hear the doctrine that a railroad is a public highway and what it charges for transportation of persons and property is a tax on the public, and that it has no more right to carry one person free and impose an additional burden upon those who pay than a tax collector would have to remit taxes of some people entirely and make those who do pay bear the entire burden?

Mr. **Weldon**. I do not regard the issuance of a pass in that respect a burden on those that pay. I do not look on it in that manner.

Mr. **Folk**. Suppose three-fourths of the people were carried free; would not those who pay have to pay more in order to give the road a reasonable return to make up for those who pay nothing?

Mr. **Weldon**. I should think not, unless they were charged in excess of the regular rate.

Mr. **Folk**. Suppose everybody had a pass except yourself?

Mr. **Weldon**. Well, I do not think I would have to pay from Paris up here any more if every man on the train had a pass except me.

Mr. **Folk**. You think the railroad would earn just as much as if everyone paid?

Mr. **Weldon**. Well, no; I do not think that.

Mr. **Folk**. Your passes were stopped when your term as legislator was ended, were they not?

Mr. **Weldon**. No.

Mr. **Folk**. You still have them?

Mr. **Weldon**. I do.

Mr. **Folk**. Over what roads do you still carry them?

Mr. **Weldon**. The L. & N. and the N., C. & St. L.

Mr. **Folk**. What service do you give in exchange for these passes you now have?

Mr. **Weldon**. None at all.

Mr. **Folk**. Do you come down to Nashville to see members of the legislature?

Mr. **Weldon**. No, sir; I have not been to Nashville but once since October, and I was here very little during 1915.

Mr. **Folk**. So, if you were a member of the legislature now, you would not be in favor of an anti-free-pass bill, would you?

Mr. **Weldon**. I would not vote for the abolition of passes.

Mr. **Folk**. Because you regard free passes in the nature of a public blessing, do you?

Mr. **Weldon**. In certain respects I do. There are quite a number of people from my county who come to Nashville over a pass that never would have been to Nashville if it had not been for free transportation.

Mr. **Folk**. So you look upon the pass system as a virtue and not a vice?

Mr. **Weldon**. I do in that respect.

Mr. **Folk**. That is all.

Cross-examination:

Mr. **Waller**. Mr. Weldon, has this custom of issuing transportation been confined only to members of the legislature?

Mr. **Weldon**. It has not.

Mr. **Waller**. Do you know as to whether there has been a custom for many years for the railroads in Tennessee to issue card passes to all public State officials?

Mr. **Weldon**. I rather think it was a custom.

Mr. **Waller**. Were those men bribed by passes, so far as you know?

Mr. **Weldon**. I should think not.

Mr. WALLER. Do you know whether or not the railroads made any discrimination in this question of issuance of passes to members of the legislature, as to those who were friendly or unfriendly?

Mr. WELDON. They did not.

Mr. WALLER. State whether or not you know of your own knowledge that members of the legislature who were notoriously hostile to railroad interests were furnished, upon their request, transportation.

Mr. WELDON. I am sure they were.

Mr. WALLER. It was also a custom to give transportation to farmers' institutes in west, middle, and east Tennessee, was it not?

Mr. WELDON. It was in west Tennessee, I know. I do not know about the middle and east. I have never taken any trips there.

Mr. WALLER. Now, Mr. Weldon, in regard to the pass transportation which you secured for constituents of yours in Henry County, I desire to ask you, in your opinion, what per cent of those persons would have ridden if they had not received the free transportation?

Mr. WELDON. Well, sir, I do not believe 10 per cent of the passes I sent to my county that the people would have come to Nashville had it not been for that. Some of my constituents that I wanted to confer with about matters rather than go home I would ask for transportation for them to Nashville, and very few of them came.

Mr. WALLER. Now, very often they would request transportation of you, and then you would request the railways?

Mr. WELDON. Yes.

Mr. WALLER. You have been asked about the antipass bills in the legislature. Do you recall how may of those have been introduced in the legislature in the last 10 or 20 years?

Mr. WELDON. No, sir; I do not.

Mr. WALLER. Has the plank in the political platform influenced persons in requesting transportation, so far as you know?

Mr. WELDON. Not that I know.

Mr. WALLER. That is all I want to ask.

Redirect examination:

Mr. FOLK. Has the plank in the political platform influenced the legislators elected on that platform to obey it?

Mr. WELDON. Well, it might some, and it might not others.

Mr. FOLK. It did not influence you, did it?

Mr. WELDON. Not as to the abolition of passes; no.

Mr. FOLK. In other words, you believe in obeying political platforms when they suit you and not obeying them when they do not suit you?

Mr. WELDON. No; I would not say that.

Mr. FOLK. Well, why is it that you disregarded the plank in the political platform of your party condemning the use of free passes by legislators?

Mr. WELDON. I rather think that is largely a matter of demagoguery, in a great many instances.

Mr. FOLK. You think that the plank was inserted in the platform of your party through mere demagogic motives, do you?

Mr. WELDON. Well, no; I do not say that; but I say it might have.

Mr. FOLK. And upon the mere assumption that the plank might have been inserted for demagogic purposes, you disregarded it, did you?

Mr. **Weldon**. No; I would not say that.

Mr. **Folk**. Were you friendly or unfriendly with the railroads as a legislator?

Mr. **Weldon**. I have been friendly to the railroads. In fact, I have been with almost every one else all my life.

Mr. **Folk**. You would consider yourself properly classified as friendly to the railroads then, would you?

Mr. **Weldon**. I would.

Mr. **Folk**. Judge Waller asked you if passes were given to those who were notoriously hostile to railroad interests. Will you give us the name of some legislator who received a pass who was notoriously hostile?

Mr. **Weldon**. I could not say that I could, because I do not know of any man who was notoriously hostile.

Mr. **Folk**. You answered him in the affirmative, that passes were given to those notoriously hostile. Now I ask you to give the names of some legislators who were notoriously hostile to the railroads, and who received passes.

Mr. **Weldon**. I do not think I answered Judge Waller positively that they did. I said I thought I was sure that they did.

Mr. **Folk**. Were you a member of the convention that adopted the platform containing the plank against free passes?

Mr. **Weldon**. I do not think I was; no, sir.

Mr. **Folk**. During your services as legislator, the fellow-servant bill came up, did it not?

Mr. **Weldon**. Yes.

Mr. **Folk**. You voted against that?

Mr. **Weldon**. I think I did.

Mr. **Folk**. Did you ever use your pass as part of an interstate journey?

Mr. **Weldon**. No.

Mr. **Folk**. Have you been out of the State lately?

Mr. **Weldon**. No.

Mr. **Folk**. How long since you have been out of the State?

Mr. **Weldon**. I could not say. I do not think I have been out of the State any. I don't remember when I ever was out of Tennessee.

Mr. **Folk**. You are not sure that you were ever out of the State of Tennessee?

Mr. **Weldon**. Oh, sure; I have been out of the State.

Mr. **Folk**. When were you out of the State last?

Mr. **Weldon**. I say, I could not say. I think I was in Hickman either in 1914, possibly, maybe 1915.

Mr. **Folk**. Hickman, Ky.?

Mr. **Weldon**. Yes, sir.

Mr. **Folk**. Well, did you get on the train at Paris, Tenn.?

Mr. **Weldon**. No.

Mr. **Folk**. Where did you get on the train?

Mr. **Weldon**. I bought a ticket from Union City to Hickman.

Mr. **Folk**. You bought a ticket at that time?

Mr. **Weldon**. I did; and I always bought a ticket when I went out of the State.

Mr. **Folk**. How did you get to Union City?

Mr. **Weldon**. I bought a ticket, when I came back from Hickman, to Union City.

Mr. **Folk.** How did you get from Paris to Union City?

Mr. **Weldon.** I went down on the morning train and stopped at Union City.

Mr. **Folk.** Did you buy a ticket from Paris to Union City?

Mr. **Weldon.** No.

Mr. **Folk.** Went on your pass?

Mr. **Weldon.** Yes.

Mr. **Folk.** So, in going from Paris to Hickman, you used your pass to Union City?

Mr. **Weldon.** And stopped off.

Mr. **Folk.** And then bought a ticket from Union City to Hickman?

Mr. **Weldon.** Yes; but I did not go on a direct train, I stopped over.

Mr. **Folk.** Coming back, how did you do it?

Mr. **Weldon.** Bought a ticket from Hickman and stopped all night at Union City.

Mr. **Folk.** Why did you do that?

Mr. **Weldon.** Because I had business there.

Mr. **Folk.** Then you used your pass on your return trip from Union City to Paris?

Mr. **Weldon.** I did.

Mr. **Waller.** In making that trip, as I understand, you went from Paris to Union City, and, having business there, you stopped there; and, having business in Hickman, when you got ready to go you bought your ticket to Hickman?

Mr. **Weldon.** Yes: I had business at Tiptonville, Ky., but I had to go by way of Hickman to get to Tiptonville.

Mr. **Folk.** Tiptonville, Tenn.?

Mr. **Weldon.** Yes.

(Witness excused.)

W. H. **Maxwell** was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk.** What is your full name?

Mr. **Maxwell.** William Henry Maxwell.

Mr. **Folk.** What is your occupation, Mr. Maxwell?

Mr. **Maxwell.** I am a merchant in a small way, and magistrate, and justice of the peace.

Mr. **Folk.** A merchant, magistrate, and what else?

Mr. **Maxwell.** That is all.

Mr. **Folk.** You live where?

Mr. **Maxwell.** I live at Stanton, Haywood County.

Mr. **Folk.** Have you ever been a member of the Tennessee Legislature?

Mr. **Maxwell.** I was a member of the senate of the fifty-eighth general assembly, 1913.

Mr. **Folk.** Did you receive an annual pass over the Louisville & Nashville Railroad after you were elected to the State senate?

Mr. **Maxwell.** Yes, sir.

Mr. **Folk.** How did you get it?

Mr. **Maxwell.** It was handed to me in Nashville after I got here, Sunday night, I think it was.

Mr. **Folk.** Did you pay your way from Stanton to Nashville?

Mr. **Maxwell.** No; I came on a trip pass.

Mr. **Folk.** How did you get that?

Mr. **Maxwell.** It was mailed to me at Stanton.

Mr. **Folk.** Did you ask for it?

Mr. **Maxwell.** No.

Mr. **Folk.** It was mailed to you?

Mr. **Maxwell.** Yes.

Mr. **Folk.** What other roads furnished you with annuals while you were a legislator?

Mr. **Maxwell.** The N., C. & St. L. and the Southern, as I now recall, I think were the only ones that I had passes. I had one trip over the Tennessee Central when I was serving on a recess committee.

Mr. **Folk.** A recess committee of the legislature?

Mr. **Maxwell.** Yes.

Mr. **Folk.** You requested passes also for others, did you not?

Mr. **Maxwell.** Yes, sir.

Mr. **Folk.** A considerable number, several hundred?

Mr. **Maxwell.** Well, I have very little idea how many.

Mr. **Folk.** In fact, it took up so much of your time that you found it difficult to attend to your regular legislative duties in order to attend to pass applicants, did you not?

Mr. **Maxwell.** Yes, sir; it became quite a nuisance.

Mr. **Folk.** Did you receive these applications for passes yourself or have a clerk to look after it?

Mr. **Maxwell.** I had to look after them myself and send them down by a porter to the railroad office.

Mr. **Folk.** Do you recall a bill to prohibit the issuance of free passes by railroads coming up while you were a member of the State senate?

Mr. **Maxwell.** No, sir.

Mr. **Folk.** It did not come up?

Mr. **Maxwell.** No, sir.

Mr. **Folk.** Do you consider the pass system a good or a bad thing from the standpoint of the public?

Mr. **Maxwell.** Well, I really don't know about that. It has been in vogue so long that I haven't really much idea about what its effect has been. I do not see any special harm.

Mr. **Folk.** A little louder.

Mr. **Maxwell.** I say I have been unable to see any special harm come of it, so far as I know. My experience was only with the 1913 legislature. I did go from Stanton to a farmers' institute several years ago on a trip pass.

Mr. **Folk.** Can you indicate what good accrued to the public through the issuance of passes to you?

Mr. **Maxwell.** Well, none except that quite a number of my constituents were enabled to come to Nashville that otherwise would not have come, and, of course, I was able thereby to visit home oftener. The per diem of a member of the legislature is not sufficient, for the distance I live, to pay regular fare and visit home very often, and for that reason I think it enabled me to transact my business at home and attend to the affairs here. So far as I know, those were the only advantages.

Mr. **Folk**. Did you regard yourself as friendly or unfriendly to the railroads?

Mr. **Maxwell**. Well, I have always been friendly to the railroads. I have never had any occasion to be otherwise. I have never had any trouble with them in my life.

Mr. **Folk**. So you have no objection to being classified as being friendly to the railroads as a legislator?

Mr. **Maxwell**. None at all.

Mr. **Folk**. Do you know, Mr. Maxwell, that there is an unconscious bias in favor of railroads felt by legislators who receive favors from the railroads in the form of passes?

Mr. **Maxwell**. No; I would not know, if I was unconscious of it.

Mr. **Folk**. What is your opinion as to whether it has any influence over the legislators?

Mr. **Maxwell**. Well, I have no opinion, except as to myself. It did not have with me.

Mr. **Folk**. Did you vote against any bill that the railroads opposed or that the railroads favored?

Mr. **Maxwell**. I do not now recall but one, which was known as the Broad Street bill, in Chattanooga. I voted against that and I would have voted against it if I had never seen a pass.

Mr. **Folk**. Were the railroads against that or in favor of it?

Mr. **Maxwell**. Against it.

Mr. **Folk**. Did the fellow-servant bill come up while you were a member of the legislature?

Mr. **Maxwell**. I don't remember it ever coming to the senate. It may have been in the house.

Mr. **Folk**. Do you think now that free passes should be abolished in this State?

Mr. **Maxwell**. Well, that is a question; I don't know. If it could be done entirely, it possibly would be better.

Mr. **Folk**. That is, free passes to legislators and to public officials?

Mr. **Maxwell**. Yes; and my constituents and everybody.

Mr. **Folk**. You think it would be a good thing?

Mr. **Maxwell**. Yes.

Mr. **Folk**. Why do you think it would be such a good thing to abolish free passes if the pass system is not a bad thing?

Mr. **Maxwell**. Well, it is just the appearance and opinion some have that it might, as you say, unconsciously influence them in their actions.

Mr. **Folk**. It suggests, too, the appearance of a legislator accepting favors from public-service carriers?

Mr. **Maxwell**. Yes; that is right; the possibility of such being the case. That would remove all that suspicion and doubt.

Mr. **Folk**. Can you give me the name of any legislator who voted against any bill that the railroads wanted who received a pass?

Mr. **Maxwell**. No, sir; I could not.

Mr. **Folk**. Now, you spoke of coming up on a trip pass from Stanton?

Mr. **Maxwell**. Yes, sir.

Mr. **Folk**. You collected mileage from the State, did you?

Mr. **Maxwell**. Yes.

Mr. **Folk**. And while you were on a recess committee you traveled on a pass?

Mr. **Maxwell.** Yes.

Mr. **Folk.** And you collected mileage from the State on these same trips, did you not?

Mr. **Maxwell.** No, sir; we got so much a day for our expense.

Mr. **Folk.** And that included mileage?

Mr. **Maxwell.** Well, possibly it did. I don't remember about that. It was just so much a day for expenses. They were all included in. My recollection is it was $5 a day for expenses. I suppose that covered hotel bills and railroad fares.

Mr. **Folk.** You do not recall whether, as a member of this committee, you collected mileage from the State?

Mr. **Maxwell.** I did not.

Mr. **Folk.** You did not?

Mr. **Maxwell.** No.

Mr. **Folk.** Did you take these trips as a member of this recess committee on your annual passes or on special-trip passes?

Mr. **Maxwell.** Well, I made them on annuals where I had passes on them: otherwise I would make them on trip passes.

Mr. **Folk.** Did you go out of the State any time during the year 1913?

Mr. **Maxwell.** No, sir.

Mr. **Folk.** All of these passes you have referred to are intrastate?

Mr. **Maxwell.** Yes, sir.

Mr. **Folk.** That is all.

Cross-examination:

Mr. **Keeble.** You say you requested quite a number of passes for your constituents while you were in the legislature to come to Nashville?

Mr. **Maxwell.** Yes, sir.

Mr. **Keeble.** I will ask you to state to the commissioner what percentage of those persons you think would have come to Nashville if they had had to pay their fare?

Mr. **Maxwell.** Well, just as an estimate, I would not suppose 5 per cent.

Mr. **Keeble.** Then, I gather from what you say, that this is true, is it not, that people of your county felt that if they could get a trip to Nashville, they would not otherwise take, they would like to have it. Is that the situation?

Mr. **Maxwell.** Yes, sir: that is the situation exactly.

Mr. **Keeble.** In regard to your constituents and their attitude, judging from the correspondence from your constituents, I would like to ask if you think most of them that you heard from objected to your attitude of receiving passes or the railroads' attitude in giving them?

Mr. **Maxwell.** They were very much in favor of them.

Mr. **Folk.** That is, those who received the passes?

Mr. **Maxwell.** Yes.

Mr. **Keeble.** So you did not have any popular uprising down in your county against the issuance of transportation?

Mr. **Maxwell.** No; it looked at one time like we had a popular uprising for them.

Mr. **Keeble.** You have been asked to give your opinion as to the advisability of issuance of passes, and you have said you thought that probably, under all the circumstances, it was the best thing to cut it out, and therefore you were willing to state that to the commission as your judgment. Do you understand that we are formulating as a subcommittee a recommendation to the Democratic Party as to what it ought to put in its platform next term?

Mr. **Maxwell.** No.

Mr. **Folk.** Did you know that there was such a plank in the last Democratic platform?

Mr. **Maxwell.** I don't recall: I think there was.

Mr. **Folk.** And also in the Republican platform?

Mr. **Maxwell.** Yes; I am sure there was in the Republican.

Mr. **Folk.** But it was not obeyed, was it?

Mr. **Maxwell.** No; it went the route of several others.

(Witness excused.)

J. A. **Harpole** was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk.** What is your full name?

Mr. **Harpole.** J. A. Harpole.

Mr. **Folk.** Where do you live?

Mr. **Harpole.** Manchester, in Coffee County.

Mr. **Folk.** What is your occupation?

Mr. **Harpole.** I stay in a bank now, and have been in it about eight years. Before that I was in builders' supplies.

Mr. **Folk.** Were you a member of the Tennessee Legislature at any time?

Mr. **Harpole.** Yes, sir.

Mr. **Folk.** If so, during what years?

Mr. **Harpole.** 1913.

Mr. **Folk.** Were you a member of the lower house?

Mr. **Harpole.** Yes, sir.

Mr. **Folk.** Did you receive a pass from the Louisville & Nashville Railroad after you were elected to the legislature?

Mr. **Harpole.** Yes, sir.

Mr. **Folk.** Did you also receive an annual from the N., C. & St. L. Railway?

Mr. **Harpole.** Yes, sir.

Mr. **Folk.** What other roads thus favored you after your election to the legislature?

Mr. **Harpole.** The Tennessee Central and Southern.

Mr. **Folk.** How about the Illinois Central and the Mobile & Ohio?

Mr. **Harpole.** I did not get any from them.

Mr. **Folk.** Did you ask the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway and the Southern and the Tennessee Central to send you passes?

Mr. **Harpole.** No, sir. Mr. Bob Gallagher, a member from Bedford County, said he wanted to go down to the Louisville & Nashville, he knew some gentleman down there, and he said he knew Gallagher, and he gave Gallagher a pass, and he gave me one for the Louisville & Nashville.

Mr. **Folk.** So you got them through Gallagher?

Mr. **Harpole.** That I did, by going with him.

Mr. FOLK. Where does Mr. Gallagher live?

Mr. HARPOLE. At Shelbyville, Bedford County.

Mr. FOLK. Is he employed by the Louisville & Nashville Railroad, do you know?

Mr. HARPOLE. I don't know whether he is or not; I guess not.

Mr. FOLK. Or the Nashville, Chattanooga & St. Louis?

Mr. HARPOLE. No.

Mr. FOLK. Was it after your election that you went with Mr. Gallagher?

Mr. HARPOLE. Yes.

Mr. FOLK. You also requested a large number of passes for your constituents?

Mr. HARPOLE. Yes: I got several passes. I did try to keep a record, but they came so thick and fast I just let it go.

Mr. FOLK. They what?

Mr. HARPOLE. I started to keep a record, but they came so thick and fast I didn't keep a record.

Mr. FOLK. You just issued them to anybody that asked?

Mr. HARPOLE. No, sir; lots and lots of them asked that did not get them.

Mr. FOLK. What rule of discrimination did you apply?

Mr. HARPOLE. Because some would ask for one and I would give it to them and they would ask again, and I thought they ought to be dished around; I did not think it was right to give them all to one, and I got letters from 25 requesting passes and did not even answer them.

Mr. FOLK. From your constituents?

Mr. HARPOLE. Yes; some of them were and some were not, some of them from my own.

Mr. FOLK. And you did not answer them?

Mr. HARPOLE. No.

Mr. FOLK. Do you consider that the pass system is a good or a bad thing?

Mr. HARPOLE. I think with an honest man it is all right.

Mr. FOLK. You think it is all right?

Mr. HARPOLE. Yes, sir. A man who would be influenced by it is a very poor man anyway.

Mr. FOLK. Did you vote against anything the railroads wanted?

Mr. HARPOLE. I don't know whether I did or not; the records show.

Mr. FOLK. Do you remember?

Mr. HARPOLE. No; I remember this free-pass bill; I voted in favor of it.

Mr. FOLK. You voted for the free pass?

Mr. HARPOLE. For the free pass, whatever it was.

Mr. FOLK. You voted in favor of free passes?

Mr. HARPOLE. Yes.

Mr. FOLK. In other words, you voted against the bill to prohibit free passes?

Mr. HARPOLE. Yes.

Mr. FOLK. You thought that was an interference with your constitutional right to ride free?

Mr. HARPOLE. I thought if the railroads wanted to give a pass, they ought to be allowed to give it.

Mr. FOLK. You thought they had a constitutional right to give free passes if they wanted to?

Mr. HARPOLE. I have had dealings with the railroads for 40 years, and they always treated me nice.

Mr. FOLK. You considered yourself, then, as friendly to the railroad interests, didn't you?

Mr. HARPOLE. Yes; and long before I ever thought of coming to the legislature.

Mr. FOLK. How did you happen to think about coming to the legislature?

Mr. HARPOLE. They just got after me to run, and wanted me to run.

Mr. FOLK. Who did?

Mr. HARPOLE. The people in Coffee County.

Mr. FOLK. Did the railroads have anything to do with it?

Mr. HARPOLE. No; and before I was elected I was asked the question if the bill comes up to abolish free passes, how will you vote, and I said I will not vote for it, because I am in favor of the railroads giving them if they want to.

Mr. FOLK. Did your constituents know you were friendly to the railroad interests?

Mr. HARPOLE. I think so; they did.

Mr. FOLK. Did anybody run against you?

Mr. HARPOLE. Yes.

Mr. FOLK. Was the railroad question an issue in the campaign?

Mr. HARPOLE. Not a bit that I ever heard of.

Mr. FOLK. You do not think it would be a good thing now to abolish free passes?

Mr. HARPOLE. No.

Mr. FOLK. You think it would work a positive injury to the State, do you?

Mr. HARPOLE. Well, I don't know; that is a pretty tolerably big question. I would hardly know how to answer it. From my personal standpoint I don't think it would.

Mr. FOLK. Did your passes cease when your term as legislator expired?

Mr. HARPOLE. No; I had a pass for 1914.

Mr. FOLK. Have you still got one?

Mr. HARPOLE. No. Now, understand, if it will not be improper, this Tennessee Central pass, I think that expired the 31st of March, 1914. I think the Louisville & Nashville just ran a little while, and the Southern, I don't remember about that.

Mr. FOLK. Your term expired in 1914, did it?

Mr. HARPOLE. Yes, sir.

Mr. FOLK. Did you get any free tickets other than passes?

Mr. HARPOLE. Tickets?

Mr. FOLK. Yes.

Mr. HARPOLE. What do you mean?

Mr. FOLK. Mileage tickets.

Mr. HARPOLE. No, sir.

Mr. FOLK. From whom would you secure these passes on the N., C. & St. L., from Mr. Hudson?

Mr. HARPOLE. I think maybe Mr. Hudson wrote about two, if I remember right; but I would send down a note to the office, and most of the time I would go down there myself.

Mr. **Folk**. Mr. McConnell, do you know him?

Mr. **Harpole**. Yes, sir.

Mr. **Folk**. I show you a letter of date May 29, 1913, addressed to Mr. D. G. Hudson, purporting to be signed by yourself, and ask if you can recall having written the original of that letter?

Mr. **Harpole**. I guess I wrote that. Of course if it was in my own handwriting I couldn't read it, but that sounds mighty like me.

Mr. **Folk** (reading):

> MANCHESTER, TENN., *May 29, 1913.*
>
> Mr. D. G. HUDSON,
> *Nashville, Tenn.*
>
> DEAR SIR: Your complimentary card pass No. L–219 received, for which please accept my sincere thanks. I assure you that it is highly appreciated, more than I can express. Anything at any time that I can be of any assistance to you or to the railroad company, you have only to command me. With kindest regards to all the boys, I am,
>
> Sincerely, yours,
>
> J. A. HARPOLE.

Did you mean that anything at any time that you could do that you would be at their command?

Mr. **Harpole**. Yes; I meant it in this way: I have found always—we used to have lots of little lawsuits in our country, and I have always thought the railroads were imposed on more than any corporation in certain circumstances, and sometimes I could bring about a settlement.

Mr. **Folk**. You would settle their lawsuits?

Mr. **Harpole**. I didn't mean I would settle their lawsuits, but sometimes, for instance, I know one man who fell off a freight car, and he was going to sue the company, and I said, "I wouldn't do that, because they will treat you all right."

Mr. **Folk**. Why did you take it upon yourself to tell him not to do that?

Mr. **Harpole**. Because he was a friend of mine, and he had been advised by enemies of the railroad to go along and sue, and I think that would be right in anything.

Mr. **Folk**. Did you do that while you were a member of the legislature?

Mr. **Harpole**. Oh, no; a way back before I ever thought of the legislature.

Mr. **Folk**. Did you receive any compensation from the railroad for that service?

Mr. **Harpole**. No; not a bit; never thought about it.

Mr. **Folk**. Here is another letter from you addressed to Mr. Frank McConnell, January 20, 1913, in which you inclosed a list of people, some five people, and requested transportation from Manchester to Nashville and return, and you say, "These are all good people, and I consider them worthy of recognition."

Mr. **Harpole**. Yes.

Mr. **Folk**. What do you mean by "worthy of recognition"?

Mr. **Harpole**. Not dead beats who just wanted to ride around to get the ride.

Mr. **Folk**. They are worthy of being recognized by a pass?

Mr. **Harpole**. Yes; they would not be considered bums or anything of that kind. Some people get a pass and take a ride just merely for the ride.

Mr. FOLK. Were they influential people?

Mr. HARPOLE. I don't know; I don't know who they were.

Mr. FOLK. J. G. Crocker, J. W. Powers, A. C. Christian, G. H. Messick, C. E. Rodes. All influential people?

Mr. HARPOLE. Yes.

Mr. FOLK. So you meant by the words "worthy of recognition" that they were influential and it would be worth while to curry favor.

Mr. HARPOLE. I meant they were not dead beats, who wanted to ride for the sake of the ride.

Mr. FOLK. And that their friendship was worth something?

Mr. HARPOLE. Yes.

Mr. FOLK. When you stated in reference to the same people in this same letter that "They have their hearts in the right place and are strictly our kind of people," you meant by "our kind of people" friendly to the railroads, didn't you?

Mr. HARPOLE. I meant they had their hearts in the right place and would do a thing that was right between man and man.

Mr. FOLK. And what did you mean by "our kind of people" in writing this letter to the representative of the railroad?

Mr. HARPOLE. I don't know what I meant by that.

Mr. FOLK. You stated that you considered yourself as properly classified as friendly to railroads?

Mr. HARPOLE. Yes.

Mr. FOLK. And, so, when you spoke of these people as being "our kind of people," it would be fair to say that you meant they were friendly to the railroad interests?

Mr. HARPOLE. I guess so; as far as I know, I guess that is right.

Mr. FOLK. You do not regard, then, transportation as a tax on the public, do you?

Mr. HARPOLE. Well, I don't know how to look at that; I don't know how about that.

Mr. FOLK. The same as the tax on your house or farm?

Mr. HARPOLE. I don't know what; I am not prepared to say about that.

Mr. FOLK. You have not thought on the question of the railroads being public highways and what is paid for passengers and freight being in the nature of a tax?

Mr. HARPOLE. No; not so much on that.

Mr. FOLK. And that they have no more right to remit your taxes for transportation than a tax collector would have to remit your taxes on your farm. You have not thought about that?

Mr. HARPOLE. No, not seriously.

Mr. FOLK. In fact, you do not believe in that doctrine?

Mr. HARPOLE. I do not know. As I said a while ago, if a man wants to give a ticket I think he should be allowed.

Mr. FOLK. In other words, you consider the operation of railroads the private concern of those who run them?

Mr. HARPOLE. Well, it looks like if they keep them up and so on, it ought to be that way.

Mr. FOLK. It ought to be their private concern?

Mr. HARPOLE. Yes.

Mr. FOLK. You do not believe in any regulation controlled by the State, do you?

Mr. HARPOLE. Yes, of course; I guess it would be proper when it comes to that part.

Mr. FOLK. If they are the private concerns of those who run them, why regulate them by the State?

Mr. HARPOLE. Well, most any corporation is regulated to some extent, aren't they?

Mr. FOLK. Not necessarily. You do not think they should be regulated on the theory that they are in the nature of public highways, do you?

Mr. HARPOLE. Yes; I guess that would be proper, if they class them so.

Mr. FOLK. But you don't think it would be wise to prohibit their giving free transportation or remitting transportation taxes to favored persons, do you?

Mr. HARPOLE. No, I do not see where there would be anything wrong if they want to and have a mind to.

Mr. FOLK. And you do not think that the fact that nearly every member of the legislature has an annual in his pocket from the railroads and secures any number of trip passes that he desires has any influence whatever over the mind of that legislator?

Mr. HARPOLE. It don't look like it ought to.

Mr. FOLK. In fact, he would feel toward the railroad just exactly as if he had never obtained a favor from them?

Mr. HARPOLE. Oh, he might feel kind of friendly.

Mr. FOLK. He might have some sentiment of gratitude?

Mr. HARPOLE. I kind of imagine if you give me a favor I want to return it.

Mr. FOLK. It is kind of natural to have a feeling of gratitude to those who do favors for you?

Mr. HARPOLE. It always was to me.

Mr. FOLK. And so with practically all of the members of the legislature having annual passes in their pockets and trip passes without limit; it is natural to assume that the railroads thereby acquired an influence over the legislature that they would not have had had these passes not been issued.

Mr. HARPOLE. They could be friends toward them, but still if they were honest they would not vote for any measure that was wrong, it would not seem to me.

Mr. FOLK. You think they would be influenced by these passes to be friendly, but you think they would not be influenced to the extent of voting in favor of a bill that they considered wrong.

Mr. HARPOLE. It don't seem to me like they would.

Mr. FOLK. But the tendency in giving all these passes and receiving all these passes is to cause the legislator to look at the question from the railroad standpoint, is it not?

Mr. HARPOLE. I guess that is partly the intention of it.

Mr. FOLK. Did the platform of your party declare against the use of free passes?

Mr. HARPOLE. I think so. I was not elected on any platform.

Mr. FOLK. What were you elected on?

Mr. HARPOLE. Just four things; I don't know as it is necessary to tell, but just four things my people told me to do, and if I did them they would be satisfied.

Mr. FOLK. Were you a Democrat or Republican?

Mr. **Harpole.** I have always been a Democrat, and was elected as an independent.

Mr. **Folk.** So you had no platform?

Mr. **Harpole.** No; none at all.

Mr. **Folk.** On free passes?

Mr. **Harpole.** No.

Mr. **Folk.** Can you recall now, Mr. Harpole, a single instance in which you voted against any bills that the railroads wanted to pass?

Mr. **Harpole.** No, I can not; I can't remember.

Mr. **Folk.** That is all.

Cross-examination:

Mr. **Waller.** Do you remember any bill that the railroads introduced in the session of 1913 and asked to be passed?

Mr. **Harpole.** That the railroads did?

Mr. **Waller.** Yes; any bill that was introduced in behalf of railroads in 1913?

Mr. **Harpole.** I don't remember; there was no railroad man said anything to be about reporting a bill.

Mr. **Waller.** There were bills introduced very hostile to railroads, were there not?

Mr. **Harpole.** Yes; I understood so.

Mr. **Waller.** Mr. Harpole, as I understand it, you felt kindly toward the railroads for a great many years?

Mr. **Harpole.** Yes, sir; ever since I commenced getting out crossties.

Mr. **Waller.** You people have not been in the habit of regarding a railroad interest as an unlawful enterprise, have you?

Mr. **Harpole.** No.

Mr. **Waller.** Was there ever a railroad issue in Coffee County at all?

Mr. **Harpole.** None that I remember of.

Mr. **Waller.** Now, the question of legislating against free transportation is simply a question of policy, is it not, which each man has his own opinion about?

Mr. **Harpole.** Yes; that is what I thought.

Mr. **Waller.** Mr. Harpole, take some of the constituents that asked you to secure transportation for them; what per cent of them do you suppose would have come to Nashville on those occasions if they had not received the transportation?

Mr. **Harpole.** Very few; very few would have come.

Mr. **Waller.** That is all.

Mr. **Folk.** Judge Waller asked you, Mr. Harpole, whether or not there were bills introduced in the legislature while you were a member that were unfriendly to the railroads.

Mr. **Harpole.** The bills, you mean?

Mr. **Folk.** Yes.

Mr. **Waller.** No; I did not ask that——

Mr. **Harpole.** I don't remember.

Mr. **Folk.** That could be classified as unfriendly to railroad interests—hostile to railroad interests?

Mr. **Harpole.** I don't remember. It seems——

Mr. **Folk.** Do you recall any bills that were introduced while you were a member of the legislature that were hostile to railroad interests, and if so, what bills?

Mr. HARPOLE. I can not remember, unless there was one—something about some switching yard, or something, at Chattanooga.

Mr. FOLK. The Broad Street bill?

Mr. HARPOLE. I don't remember what it was; I don't remember.

Mr. FOLK. The fellow-servant bill; did that come up?

Mr. HARPOLE. That came up.

Mr. FOLK. Would you regard that as hostile to railroad interests?

Mr. HARPOLE. Well, I don't know.

Mr. FOLK. Did you vote against it?

Mr. HARPOLE. Yes; I did.

Mr. FOLK. Why?

Mr. HARPOLE. I thought it was too drastic. I think a fellow-servant bill would be all right, but I think it can be made too drastic.

Mr. FOLK. You know most of the other States have fellow-servant bills applicable to railroads, don't you?

Mr. HARPOLE. I think so.

Mr. FOLK. By speaking of bills introduced hostile to railroads, you mean bills like the fellow-servant bill and bills of that character?

Mr. HARPOLE. Yes.

Mr. KEEBLE. Gov. Folk has asked you about the fellow-servant bill as though that had reference alone to railroad employment. I will ask you if it is not a fact that during that session of the legislature the manufacturers of the State fought the fellow-servant bill?

Mr. HARPOLE. Yes.

Mr. KEEBLE. And you are aware, are you not, that since the passage of the employers' liability act by Congress that infinitely the great majority of railroad employees are protected by that and not affected by any State law?

Mr. HARPOLE. I don't remember about that.

(Witness excused.)

JOHN A. HARE was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Your full name?

Mr. HARE. John A. Hare.

Mr. FOLK. Where do you live?

Mr. HARE. In west Tennessee, in Henderson County.

Mr. FOLK. What is your occupation?

Mr. HARE. A merchant and a farmer.

Mr. FOLK. Have you ever been a member of the Tennessee Legislature?

Mr. HARE. Yes, sir; I was a State senator in 1913.

Mr. FOLK. Representing what county?

Mr. HARE. Henderson, Madison, and Chester.

Mr. FOLK. After your election to the State senate did you receive an annual pass over the Louisville & Nashville Railroad?

Mr. HARE. No, sir; not right after I was elected.

Mr. FOLK. How long after?

Mr. HARE. Well, the representative or the floater from that county—he said he could get me a pass, and he had the pass for me when I went to my county seat, and I received the pass for the year after I came up here.

Mr. FOLK. How did you get here?

Mr. HARE. I came in on that pass he sent me.

Mr. FOLK. Did you receive a pass from the N., C. & St. L., an annual pass?

Mr. HARE. The N., C. & St. L.; yes, sir.

Mr. FOLK. What other roads gave you annuals?

Mr. HARE. The Louisville & Nashville, and then, some time in the summer, one from the Mobile & Ohio, I believe. I do not believe I received but three.

Mr. FOLK. Did you use these annuals?

Mr. HARE. What did you say?

Mr. FOLK. Did you travel on these annuals?

Mr. HARE. Only on the one from the N., C. & St. L.

Mr. FOLK. Did you travel on the L. & N.?

Mr. HARE. No.

Mr. FOLK. You did not use that?

Mr. HARE. No.

Mr. FOLK. Did you request trip passes for others from the N., C., & St. L.?

Mr. HARE. Yes, sir.

Mr. FOLK. In fact, you made several hundred requests, did you not?

Mr. HARE. Well, I couldn't tell the number. There were a good many.

Mr. FOLK. It took a great deal of your time to attend to these requests for passes, did it not?

Mr. HARE. Yes, sir. I thought it looked like I stood in need of a secretary. I wasn't in no ways fast enough for the business.

Mr. FOLK. They came to you more rapidly than you could attend to them?

Mr. HARE. Well, I tried to attend to them, I will admit, though at the winding up of the first session, just—well, you might say the last week—there were more than I could attend to.

Mr. FOLK. Where would you meet these applicants for passes?

Mr. HARE. Well, I would meet them—the mail would be brought and put on my desk.

Mr. FOLK. They would request the passes by letter, usually, would they?

Mr. HARE. Yes, sir.

Mr. FOLK. Were you friendly to the railroads as a member of the legislature?

Mr. HARE. Well, I don't think I am an enemy to no institution.

Mr. FOLK. Well, would you object to being classified as friendly to railroad interests as a member of the legislature—as having been friendly?

Mr. HARE. You mean by that that I would vote for a measure that would be of interest to the railroad against the people?

Mr. FOLK. Yes.

Mr. HARE. Well, if I know myself, I wouldn't.

Mr. FOLK. You would not?

Mr. HARE. No.

Mr. FOLK. Do you recall when you were a member of the senate a bill came up to prohibit the use of free passes?

Mr. HARE. Well, I was in the caucuses on that, and I believe the majority of the caucuses was that way.

Mr. Folk. Was what way?

Mr. Hare. Was in favor of the antipass bill.

Mr. Folk. The majority of what caucus?

Mr. Hare. Well, you see——

Mr. Folk. The Democratic caucus?

Mr. Hare. Yes; the independent Democrats and Republicans.

Mr. Folk. You were elected that year as an independent Democrat, were you?

Mr. Hare. Yes, sir. I couldn't say, Governor, whether I was in favor of that bill or not. I was willing to put it in the committee and let it stay there.

Mr. Folk. You had nothing against the bill, but you had no objection to its dying in committee; is that the idea?

Mr. Hare. It was my way of thinking, just as I said; I wouldn't have knowed; I hadn't decided which would be the best.

Mr. Folk. So you thought it would be better to let it die in committee?

Mr. Hare. Well, that would give me more time to think about it.

Mr. Folk. How did the bill die? Did it die in committee?

Mr. Hare. That was my understanding.

Mr. Folk. So you got time to think, did you?

Mr. Hare. Yes, sir.

Mr. Folk. Have you been thinking ever since?

Mr. Hare. I have, occasionally. I have talked with others about it, and other people have asked me what I think about it.

Mr. Folk. Do you think now that the pass system is a good or bad thing from the standpoint of the public?

Mr. Hare. Well, that is a little hard question for me. I know there are a great many good things accomplished by the passes, for the farmers who attend the farmers' conventions, and I am satisfied they would not do it without it, and when I was up here there were several who would bring their sick folks up to the doctor and would ask for a pass, and it was very easy to get the pass for the sick person, but it was a tug to get it for the doctor. They didn't care anything about issuing one for a doctor, but I never had them to say a word in regard to a sick person.

Mr. Folk. Were all these people sick people you asked passes for?

Mr. Hare. No, sir.

Mr. Folk. Did they all come from your district?

Mr. Hare. Well, I think they did, but in one application I got 22 passes from Decatur County that was in Senator Thomas's district.

Mr. Folk. What, were you attending to his business?

Mr. Hare. I didn't attend to it.

Mr. Folk. Why not?

Mr. Hare. Well, I had as much as I could attend [illegible] at home.

Mr. Folk. Why did they come to you; did they think you had more influence with the railroads than Senator Thomas?

Mr. Hare. No; I just allowed some of them, they were acquainted with me, and they just thought anyone in the State of Tennessee they reckoned would do, and I believe there were two of that number I knew they lived in my county, and I got one of them a pass.

Mr. Folk. You just thought you would do it for them?

Mr. Hare. What?

Mr. Folk. These people that wrote to you.

Mr. Hare. Yes. Well, I just allowed they came to write to me because they were acquainted with me.

Mr. Folk. Can you tell us what bills unfriendly to railroad interests came up while you were a member of the senate other than this antipass bill, if you may term that as unfriendly?

Mr. Hare. Well, there was a bill came up in regard to moving the switch yard at Chattanooga; that was one bill that came up; and then the antipass bill; I don't know whether that would be against the railroads or not; I don't know what they proposed to accomplish by it. I couldn't swear what they proposed to accomplish by the antipass bill, by being against it. Well, of course, I have heard some say it is to influence the representatives, that they would feel under obligation to vote for their bills. I don't know; that is why I got the idea they didn't want it to pass.

Mr. Folk. How about the fellow-servant bill?

Mr. Hare. Well, I am not acquainted much with that bill.

Mr. Folk. You don't recall it?

Mr. Hare. No; that bill never was argued much before me.

Mr. Folk. You spoke of your constituents and others making life a burden, in a sense, in their demands on you for passes. Can you tell us why?

Mr. Hare. Why they demanded?

Mr. Folk. No; can you tell us why these people did not write to the railroads directly for their passes instead of asking you?

Mr. Hare. Well, here is the way I would answer that, that they elected me to the State senate——

Mr. Folk. To give them passes?

Mr. Hare. And they just thought I was their servant and they would just call on me to attend to the business for them, and that the railroads might not see after it very well, as they had their business to attend to.

Mr. Folk. In other words, you think they wrote to you for their passes instead of writing to the railroads, because you were a State senator?

Mr. Hare. Yes, sir; and I would be wanting election next year anyway, and I would be very handy in sending them on all I had to give.

Mr. Folk. And that you had more influence with the railroads by reason of being a State senator than they naturally would have; is not that true?

Mr. Hare. Well, yes; some of them might have thought that, some of the most wisest ones.

Mr. Folk. The most wisest among them, as you say, knew by reason of the fact that you were a State senator you had an influence with the railroads that they, as private citizens, did not have. In that they showed very great wisdom, didn't they?

Mr. Hare. Well, now, they might have thought that. I couldn't say that that was it. They might have thought that.

Mr. Folk. Do you agree with those wise ones?

Mr. Hare. What did you say?

Mr. Folk. Do you agree?

Mr. Hare. With those wise ones?

Mr. Folk. With those wise ones.

Mr. HARE. Now, in some instances it might be that way. I tried not to let it be that way; I did.

Mr. FOLK. What did you try to do?

Mr. HARE. I tried to do this: I tried, when it came up between a corporation or a company and the people, I tried to vote just as intelligently as I could for the people. I tried to do that. I believe I would have left the pass business all went before I would have cast my vote for putting a burden on the people and the railroad receiving advantage of that burden. I believe that is what I would have done.

Mr. FOLK. And yet these people called on you to get their passes because they knew you had an influence with the railroads by reason of being State senator that they did not have as private citizens?

Mr. HARE. Well, I never——

Mr. FOLK. And that was true, was it not?

Mr. HARE. Well, it might have been. I could not tell what their thoughts were. It might have been. I know that my being State senator—by my vote I had the vote of the three counties stored away in me as State senator—and I had that power, as far as that was concerned. I was there and I was a free agent. I could vote just the way I pleased and, of course, if the people knowed that power, they might have thought that thing. I would myself, I think.

Mr. FOLK. You would yourself?

Mr. HARE. Yes; I would.

Mr. FOLK. Did you ever have a lawsuit against a railroad company?

Mr. HARE. No, sir; I had one come up from the company.

Mr. FOLK. You had?

Mr. HARE. But I didn't employ no lawyer.

Mr. FOLK. Suppose you were sued by a railroad and you came to try your case and you were to learn that the judge and every member of the jury had an annual pass from the railroad who was sueing you in his pocket, what would you do?

Mr. HARE. Well——

Mr. FOLK. You would try to get another jury, would you not?

Mr. HARE. I would love to know the material that those men were made of. I would be a little uneasy.

Mr. FOLK. If you were sueing a railroad you would prefer to try your case before a judge and jury none of whom carried passes than before a judge and jury having passes, would you not?

Mr. HARE. Everything else being equal, I would.

Mr. FOLK. You would?

Mr. HARE. Yes; everything else being equal, with the men, I would.

Mr. FOLK. Have you a pass now?

Mr. HARE. No.

Mr. FOLK. And people don't bother you, Mr. Hare, much now to get passes for them, do they?

Mr. HARE. Well, my brother he was floater in 1915 and they would come to ask me to get them a pass through him, if I could.

Mr. FOLK. Why not through you?

Mr. HARE. Well——

Mr. FOLK. It was because you were no longer a State senator?

Mr. HARE. Well, I wasn't up there.

Mr. FOLK. They do not come to you any longer because you are no longer a State senator?

Mr. HARE. Well, occasionally I have a fellow come to me and he wants to know if I couldn't get him a pass.

Mr. FOLK. Well, that is through force of habit; they do not flock to you as they did in the days when you were State Senator?

Mr. HARE. I think not; no.

Mr. FOLK. And they do not come because your term of office has expired?

Mr. HARE. Since my term of office has expired?

Mr. FOLK. Your passes have expired and your influence with the railroads has expired.

Mr. HARE. Well, I believe the railroads, myself, are perfectly friendly, and their officials are about here.

Mr. FOLK. Do you think you could get as many passes from them now as you did when you were State senator?

Mr. HARE. No; I wouldn't expect to if I was to call on them.

Mr. FOLK. Well, they gave you those passes because you were a State senator?

Mr. HARE. I just allowed as long as it was the time of the year the legislature was in session it was a sort of habit, and I was asking and they were just giving out passes, and it didn't cost much anyway.

Mr. FOLK. It didn't cost them much except the printing?

Mr. HARE. And a little coal throwed in once in a while.

Mr. FOLK. What is that?

Mr. HARE. And a little coal throwed in once in a while.

Mr. FOLK. That is all.

Cross-examination:

Mr. WALLER. Those constituents of yours asked you for passes because they understood it was a custom?

Mr. HARE. Yes.

Mr. WALLER. That had grown up here in this State?

Mr. HARE. Why, I would just love to explain; I think I was a little over average burdened with that on account of I was elected in sort of a new territory. I live 6 miles northeast of Lexington and up in back in a place where they were not used to coming in on a pass, and when I would send out one the boys would come together and say, "Such-and-such has a pass; let's you and I write to Hare and let him send us some," and they would get up and they would multiply by 10, and they were not used to coming up to Nashville; they were not so.

Mr. FOLK. What did they want to come to Nashville for?

Mr. HARE. Well, they wanted to come to Nashville to see the penitentiary and the capitol.

Mr. WALLER. Of those persons who asked you to secure the transportation, what number do you suppose would have come to Nashville if they had not received passes?

Mr. HARE. What per cent?

Mr. WALLER. Yes.

Mr. HARE. Well, Judge, I couldn't hardly tell you that. I consider—now, those sick people, there were several of them; they might have come.

Mr. WALLER. They were coming to the hospital?

Mr. Hare. Yes; they might have come. I couldn't hardly tell you. It would have been a mighty small per cent.

Mr. Waller. Did those friends of yours who asked you to secure their transportation understand that you were putting yourself up under any obligation to a railroad company to get them?

Mr. Hare. No, sir; I don't think they did.

Mr. Waller. They understood that it was a custom that had grown up here and they wanted to come to Nashville while the legislature was in session?

Mr. Hare. Yes.

Mr. Waller. And did you understand that when you got those passes that you were putting yourself under obligation to the railroad company?

Mr. Hare. No; I didn't understand it; and if the railroad officials understood that, they were mistaken in me. I didn't understand it.

Mr. Waller. You said something about the farmers' institute. I would like for you to explain to the chairman of the Interstate Commerce Commission the good that the farmers' institute has done in west Tennessee and whether or not you think such an institution could have existed if the railroads had not assisted through free transportation?

Mr. Hare. Well, I believe it would have been mighty slow to get up, and I believe there are lots of old gentlemen who attended it that I knew of who did not care anything about going the first time they went, but they hated to receive the pass and have it die and then he had not gone on it. I believe he would have been willing to let some one else have it, but he hated to have the pass die and it not be utilized, and by so doing it got up an interest in him.

Mr. Waller. An interest in the farmers' institute?

Mr. Hare. Yes.

Mr. Waller. What good has that institute done to the people of west Tennessee?

Mr. Hare. Well, I think it has educated the people in regard to the different fertilizers it takes or the different elements it takes to put on the ground to make the product. I think it has educated them to that.

Mr. Waller. Giving them a new light on the question of intelligent farming?

Mr. Hare. On a great many things.

Mr. Waller. Now, do you know how that transportation is given? Is it not given through one of the departments of the State government, through the agricultural department?

Mr. Hare. Well, I don't understand right along how that is. I believe I used one myself.

Mr. Waller. Senator Hare, was there any secret in any way in the issuance of this transportation?

Mr. Hare. Not as I know of.

Mr. Waller. When you got your mail up there, what ones you wanted to ask for you made a list of them and either came down or sent them down to the railroad office?

Mr. Hare. Yes, sir.

Mr. Waller. And everybody understood that everybody else was doing the same thing?

Mr. Hare. Yes, sir; that is the way I understood it.

Mr. **Waller.** And there was no secret about it?

Mr. **Hare.** No.

Mr. **Waller.** No bargaining about it?

Mr. **Hare.** I don't know of any. If there was, it was unbeknown to me.

(Witness excused.)

Chairman **Meyer.** We will take a recess now until 2 o'clock.

(Whereupon, at 12.35 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

J. A. **Clement** was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk.** Where do you live?

Mr. **Clement.** At Dickson, Tenn.

Mr. **Folk.** What is your occupation?

Mr. **Clement.** Lawyer.

Mr. **Folk.** Are you a member of the General Assembly of Tennessee?

Mr. **Clement.** Yes, sir.

Mr. **Folk.** At this time?

Mr. **Clement.** Yes, sir.

Mr. **Folk.** How long have you been a member of the Tennessee Legislature?

Mr. **Clement.** This is my second term for the present Governor, which, when this year is out, will complete a term of two years each, making four years. I was here 18 or 19 years ago as a member.

Mr. **Folk.** After you were elected to the State senate did you receive an annual pass from the Louisville & Nashville Railroad?

Mr. **Clement.** Yes, sir. I could not state, though, just exactly what time I received it, but—well, now, let us see. Yes, sir; I think I did, from the Louisville & Nashville Railroad. I live on the N. & C. and hardly ever travel on the Louisville & Nashville.

Mr. **Folk.** What other railroads in Tennessee furnished you with annual passes while you were State senator?

Mr. **Clement.** During my last service in the general assembly no other railroad except the Louisville & Nashville and the N. & C. However, I made no application to any other railroad company. I did make application to the N. & C. and the L. & N.

Mr. **Folk.** You requested a large number of trip passes from the Nashville, Chattanooga & St. Louis Railway during the year 1913?

Mr. **Clement.** Well, I suppose it might be termed a large number. However, I could not give any sort of an idea as to just the number.

Mr. **Folk.** According to the record we have, you requested 581.

Mr. **Clement.** Five hundred and eighty-one?

Mr. **Folk.** Yes.

Mr. **Clement.** For the two years?

Mr. **Folk.** Would that be approximately correct, to your recollection?

Mr. Clement. I could not give you any sort of an idea about that, Governor.

Mr. Folk. Do you think the pass system is a vice or a virtue. Senator, from the standpoint of the public?

Mr. Clement. Well, I would hardly know how to answer that question. It is owing to what you would mean, Governor, about a vice or a virtue.

Mr. Folk. Does it result in injury to the public or benefit to the public?

Mr. Clement. That I could not say. I can only speak from my personal experienece. That is all I can say.

Mr. Folk. Did all the other members of the legislature receive passes, as far as you know?

Mr. Clement. My information was that Senator Church declined a pass. I do not know whether that is true or not.

Mr. Folk. That was a rumor, was it?

Mr. Clement. Yes, sir; as far as I know, all the other members accepted passes. However, I don't know; I couldn't speak for them.

Mr. Folk. You have no idea how that rumor started, have you?

Mr. Clement. I think I heard Senator Church make the statement, perhaps in open senate. I am not sure about that; I think so. And I did not hear any other members' attitude on that question discussed; that is, outside of my immediate acquaintances and associates that I knew well.

Mr. Folk. Do you know Mr. D. G. Hudson?

Mr. Clement. Yes, sir; he served as clerk and master of the chancery court at Camden when I practiced law at Camden, and was raised in the same county.

Mr. Folk. Did you make a number of your requests for passes through him?

Mr. Clement. Almost all of them, as I now remember, Governor, since he has been connected with the road, and that has been all the time during these last four years of my term.

Mr. Folk. I show you what purports to be a copy of a letter written by you to Mr. Hudson dated October 7, 1915, and will ask you to examine this copy and state whether or not you wrote the original of which this is a copy?

Mr. Clement. As to my personal recollection of all of the contents of this letter, I could not say; but I take it it is a true copy. However, in explanation of the——

Mr. Folk. Suppose you just read the letter.

Mr. Clement. Yes, sir; and then I will explain.

Mr. Folk. Yes.

Mr. Clement (reading):

J. A. Clement, Lawyer, Suite 11–13, Baker Building,
Dickson, Tenn., October 7, 1915.

Mr. D. G. Hudson,
Nashville, Tenn.

Dear Bribe Giver: You promised me Saturday you would send pass for Mr. C. from Dickson to Nashville and return, Monday, but you overlooked your hand again. Luke must have you thinking. Please send it by the 2.15 train to-morrow, if possible; also one for Arch Clement and brother from Dickson to Pegram and return. They want to go up Saturday morning on accommodation, and if you can't get them out at the time indicated, then get them on the 5.30 to-morrow afternoon.

Yours, truly,

J. A. Clement.

Mr. FOLK. What did you mean by the expression, "Dear Bribe Giver"?

Mr. CLEMENT. Quoting from the Tennessean, where Senator Luke Lea was—or in some communication where he had charged that Dorsey G. Hudson, the bribe giver, was at a certain meeting, is my recollection.

Mr. FOLK. At a certain what?

Mr. CLEMENT. At a certain meeting somewhere about the Maxwell House. I am not sure about that, but it was something growing out of that. And, knowing Mr. Hudson as I did——

Mr. FOLK. That was simply ironical, then?

Mr. CLEMENT. Yes, sir; that is all there was to it. And I will say further, if Mr. Hudson ever offered a bribe, I never heard of it, to any living man. I know he did not to me; neither did any other man connected with the railroad company. But that is where it came from—was from an attack that Senator Lea had made on certain individuals, including Mr. Dorsey G. Hudson.

Mr. FOLK. What did you mean by the expression, "Luke must have you thinking"?

Mr. CLEMENT. Well, as I now recall, Governor, that was the time that Senator Lea was making things pretty warm in Tennessee against the railroad companies and having a great deal to say about the N. & C. and the L. & N., and I said to him—that was ironical also, for the reason——

Mr. FOLK. It was ironical to say that he could be thinking, do you mean?

Mr. CLEMENT. What is that?

Mr. FOLK. Was it ironical to say that Mr. Hudson could be thinking?

Mr. CLEMENT. I said that part of it—"Luke must have you thinking"—because it never occured to me but what Mr. Hudson would send the pass, as he had promised to do.

Mr. FOLK. Did the antipass bill come up while you were a member of the senate?

Mr. CLEMENT. Do you mean in the senate?

Mr. FOLK. Yes.

Mr. CLEMENT. It never came up for a vote that I remember.

Mr. FOLK. It died in committee?

Mr. CLEMENT. My recollection is it died in the house before it got to any action of the committee in the senate. However, I will state that I was never present at a meeting of the committee when the question came up.

Mr. FOLK. Did you express yourself as in favor or against that measure?

Mr. CLEMENT. Yes.

Mr. FOLK. Were you for or against it?

Mr. CLEMENT. I was for the abolition of the pass system.

Mr. FOLK. You wanted to abolish the pass system?

Mr. CLEMENT. And the only gentleman who ever approached me—Mr. Hudson asked me one day; he said, "Mr. Arch, what do you think will become or be done about this pass business?" I said to him, "I think it will pass," because, as I now recall, I said to him then—that is my recollection now—that both political parties in Tennessee had declared for the abolition of the pass system, and I think I told him that I expected to vote for it, and that is the only time it was ever mentioned to me by any railroad man.

Mr. **Folk**. You regard the pass system, then, as an evil that should be abolished?

Mr. **Clement**. Well, yes, sir; in a sense, I think it is, for this reason: There are so many people that feel like that the public officials are influenced and that their actions are directed by the use of this system. I did state further—I know the matter came up and the question came up that farmers ought to be exempted from the operation of that pass system—that is, they ought to be permitted to issue passes to farmers. I said this, and I feel that way, that it ought to be, if there is any class of people, as a class, laborers—if one should be exempt all should be exempt. In other words, there should be no discrimination. I was approached and urged very strenuously against the passage of that bill by men connected with the farming interests—more strenuously than by anybody else.

As to what their motives were I do not know, but they said to me this—the president of the farmers' union talked to me about it, and also I think they call him the business manager. They said: "You cut off this system from us and it absolutely destroys our ability to reach the people over Tennessee. It affects us in attending our institutes;" and in that way, with demonstration farms that the roads began to institute in Tennessee, they insisted it was an advantage to them, and for that reason——

Mr. **Folk**. Did you ever attend one of these farmers' institutes?

Mr. **Clement**. Yes.

Mr. **Folk**. Do most of the farmers who attend those institutes ride free?

Mr. **Clement**. I understand that—that has been my information—that they do. That used to be the custom. I do not know as to the last year or two. I could not say about that. I have not been to a farmers' institute for three or four years, perhaps.

Mr. **Folk**. What did you do, Senator, to bring about or to aid in bringing about the favorable consideration of the antipass bill?

Mr. **Clement**. As I said awhile ago, Gov. Folk, I am situated a little different to other people. I hardly ever attend any committee meeting, and did not take any active part one way or the other on committees, and but few other measures; because I go home every night. I live out some forty-odd miles, and I did not remain in town at night. Most of the committee meetings were held at night; hence I attended very few.

Cross-examination:

Mr. **Waller**. You have been asked about a letter dated October, 1915, was it?

Mr. **Clement**. Yes, sir; October 7.

Mr. **Waller**. Was there any political campaign pending in Tennessee at that time?

Mr. **Clement**. Yes, sir.

Mr. **Waller**. What was it?

Mr. **Clement**. There was a race on for United States Senatorship before the Democratic Party; the primary, as I now recall. I do not remember the date of the first primary, but there were two primaries. There was a primary in which three candidates participated, and later there was called a run-off primary. I remember that that was December 15.

Mr. WALLER. Who were the candidates in the first primary?

Mr. CLEMENT. Gov. Malcolm R. Patterson, Congressman K. D. McKellar, and Senator Luke Lea. That was the first primary you asked me about.

Mr. WALLER. Who were in the second primary?

Mr. CLEMENT. Congressman K. D. McKellar and Gov. M. R. Patterson.

Mr. WALLER. You spoke of some attacks made on Mr. Hudson in the Nashville Tennesseean during that campaign. Would you mind explaining that a little more fully?

Mr. CLEMENT. I only have a faint recollection of it, Judge Waller, about the publication, and I may not be right about it being a publication; but as I now recall the matter there was in some letter, and I think it was published in some paper, or an article in Senator Luke Lea's paper, the Nashville Tennesseean and American, telling about a meeting, as I now recall, at the Maxwell House, in which perhaps Judge Murray, of Chattanooga, was referred to, and perhaps some of Gov. Patterson's friends and D. G. Hudson, the bribe giver. That is my recollection of the matter. But to undertake to say that was the substance of the matter, I could not do that.

Mr. WALLER. Do you know whether or not Mr. Hudson was present at that meeting?

Mr. CLEMENT. My information was afterwards that he was not, but I could not tell because I was not there myself; but I got the information—I do not know how I got that; perhaps in some document published afterwards, that he was not even there; but to say how that was, I could not tell.

Mr. WALLER. Was Mr. Hudson repeatedly cartooned in the Tennesseean and American during that campaign?

Mr. CLEMENT. Yes, sir; he was frequently cartooned, as was Gov. Patterson and Col. Stahlman, as I now remember, and perhaps a number of others; the Louisville & Nashville, I think it was generally in connection with the Louisville & Nashville; some reference to the Louisville & Nashville. I remember, as I now recall it, that Gov. Patterson was cartooned as being dead and buried. Some gentleman remarked that they had buried the wrong man; I remember that.

Mr. WALLER. Senator Clement, you have stated that you do not believe it is best to have this pass system. Do you know how long that has prevailed in Tennessee?

Mr. CLEMENT. No, sir; I do not, Judge Waller. It was in vogue in 1897, when I first became a member of the Tennessee Legislature. I know I had some pretty warm spats with some of the officials myself, because I did not think they gave them to me like they did others.

I remember stating to D. G. Hudson and Mr. McConnell since I have been in the last time—I had sent some requests down there and I told them: "Now, I want you to send my requests back signed declining to give them, because I would rather you would do that than do it; but as long as you give them I feel like my people are entitled to them," and so after that they sent them.

Mr. WALLER. These people would write to you and request you to secure transportation for them?

Mr. CLEMENT. Yes, sir; and I discouraged it as much as I could.

Mr. WALLER. Most of them were coming to Nashville and giving as a reason that they wanted to be here during the legislature?

Mr. CLEMENT. Yes, sir.

Mr. WALLER. Senator Clement, what would be your estimate of what per cent of these people would have come anyway, if they had not got transportation?

Mr. CLEMENT. Well, that would only be guesswork. I could not say as to that, Judge Waller; but I know a great many come on free transportation that would not come otherwise. And I will say further, in that connection, that I have frequently said, and I think it is true, a man like me a railroad pass costs him more than it comes to, because he goes away from his business and leaves home when he would not otherwise leave, and it is not the amount that the railroad fare would cost so much as the money he spends away from home and the time he loses.

Mr. WALLER. I will ask you this: Do you regard that the act of a member of the legislature or other public official of the State having requested and received a pass as any evidence of dishonesty, either on the part of the one who receives it or on the part of the one who gives it?

Mr. CLEMENT. I have certainly never so regarded it, or I should not have asked nor received any transportation. However, that is a matter that appeals to each individual.

Mr. WALLER. Well, it is a fact, is it not, that every department of the State, officials of the State, every department of the State, have in times past used transportation of that character?

Mr. CLEMENT. That is true as far as my knowledge extends.

Mr. WALLER. Now, as to these farmers' institutes, of which you spoke, they are organized and operated under one department of the State government, are they not?

Mr. CLEMENT. Yes, sir; known as the agricultural department.

Mr. WALLER. Was there ever any secrecy or privacy about the issuance of this transportation, so far as you know?

Mr. CLEMENT. So far as I know there never was. The custom of that department has changed somewhat, as I understand. There was a time when transportation was sent out and given to people regardless as to whether they were farmers or not, but my understanding has been of recent years it is only issued to farmers—or that is the intention of it, as I understand. That, as I recall, is by a different system than the ordinary system of issuing passes.

Mr. WALLER. Senator Clement, what was the issue in this senatorial campaign, if any, that you speak of last fall?

Mr. CLEMENT. Well, there was—I was going to say that the record can show the issue, but I believe all the candidates agreed that they were for prohibition. The main issue that was made, as I understood, was the fight against the railroad companies on the one hand; that is, so far as Senator Lea was concerned, that was the main issue, if that is what you are driving at. So far as the other gentlemen were concerned, as I now remember, there was no sharp issue between them.

Mr. WALLER. You speak of the railroads. Senator Lea's fight, though, was principally against the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway.

Mr. **Clement.** The Louisville & Nashville and the Nashville, Chattanooga & St. Louis; so far as I remember there was no question raised about any other railroad in Tennessee. I know that was frequently mentioned in the papers—that the fight was against the L. & N. and the N., C. & St. L.—and I remember also that questions were made that all other railroads in the State of Tennessee followed the same system of the issuance of free transportation; but as to how that is I don't know, because I never asked for any, as I now recall, on any other railroad in Tennessee. However, the Tennessee Central was excepted from that rule as in the hands of a receiver. My information was at that time that it did not issue free transportation perhaps except as directly to the representatives, and I don't know whether it issued to the representatives or not. I mean members of the general assembly.

Mr. **Waller.** That is all.

Redirect examination:

Mr. **Folk.** Senator, you have been identified with politics in Tennessee more or less for 20 years?

Mr. **Clement.** Yes, sir; in a way, and have not been a very successful politician, either; because I didn't agree with a great many men. But I have, in a way, been identified with politics for that length of time.

Mr. **Folk.** Is it or is it not a fact that the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway are and have been very active in the political affairs of Tennessee?

Mr. **Clement.** I could not tell you about that, Governor. It has been alleged in the papers, but I never came in personal contact with any of its influence one way or the other; that is, directly.

Mr. **Folk.** You know Mr. Hudson very well?

Mr. **Clement.** Yes, sir.

Mr. **Folk.** Did you every know of his campaigning with any one in behalf of the railroad in the effort to control votes for railroad interests?

Mr. **Clement.** I never did; no, sir. He never did with me; and I never knew of his trying to do that with any other one.

Mr. **Folk.** Do you know what was the status of Mr. Hudson with reference to legislation?

Mr. **Clement.** I do not; except my information was that he had charge of what was known as looking after the local newspapers, and the issuance of transportation, and things like that.

Mr. **Folk.** For whom?

Mr. **Clement.** For the N. & C.

Mr. **Folk.** Looking after local newspapers for the Nashville, Chattanooga & St. Louis Railway?

Mr. **Clement.** Yes, sir; so far as transportation is concerned, I say.

Mr. **Folk.** Do you know whether he did anything else? Did he devote his whole time to looking after newspapers?

Mr. **Clement.** No, sir; as I understand, he also looked after the claim department. For instance, an injury occurs on the road; he is out on the road a great deal of the time—is my information—and I have seen him out looking after matters of that kind, trying to settle.

Mr. Folk. Do you know whether he attends conventions or meetings of party committees, and assemblages of that character?

Mr. Clement. Do you mean committees in the legislature or——

Mr. Folk (interposing). No; party committees, the State Democratic committee or the Republican committee?

Mr. Clement. I have seen him here when the committees would meet here, since he has been connected with the railroad company. I have seen him at the gatherings.

Mr. Folk. Let us get your views a little more clearly on this question as to the participation of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in politics. Would you say that they do not take an active part in politics in this State?

Mr. Clement. No, sir; I would not say that, because I don't know.

Mr. Folk. Do you not know that it is very difficult for anyone opposed by these two railroads to be elected in this State?

Mr. Clement. No, sir; I have not understood that, Governor. That may be true, but I have not so understood it. I know that when you get into the country, whenever I get a lawsuit against either one of these railroad companies, I am sure that the country people are with—or, I mean, juries are against the company. But as to the other question, I don't know about that.

Mr. Folk. So you don't know to what extent they participate in the political affairs of this State?

Mr. Clement. I do not.

Mr. Folk. Speaking about juries, would you feel, if you had a case against a railroad, that you would be treating your client fairly to go to trial before a jury every member of which has a pass of the railroad you are suing in his pocket?

Mr. Clement. No, sir; I could not say that I would.

Mr. Folk. You would feel that that jury would be influenced more or less?

Mr. Clement. Yes, sir.

Mr. Folk. By the favor received?

Mr. Clement. Yes, sir; and the reason I say that, the time has been—I don't know whether it is true now or not—that every judge on the bench in Tennessee had them, as far as they would accept them; and, so far as I know, did accept them, except Judge Bell. I practiced before him a great deal, and I will say further that I never was afraid to try a lawsuit before any judge that had a railroad pass in his pocket. And the difference is this: The men holding those judicial positions, I feel sure, the railroad pass would not influence them one way or the other. I think that is true; but a man who was not so well versed in law and other matters in general, I don't know about that; I wouldn't care to try a lawsuit entirely before a jury with railroad passes in their pockets.

Mr. Folk. You think the average man is more influenced by favors of that character than a judge—one with the training of a judge—do you?

Mr. Clement. I think so; yes, sir. That would be my opinion about it.

Mr. Folk. Is it the natural disposition of men to be grateful for favors received?

Mr. Clement. Oh, that is naturally true; yes, sir.

Mr. Folk. And it is a sentiment that is human?

Mr. Clement. Certainly.

Mr. Folk. In every human heart?

Mr. Clement. Certainly.

Mr. Folk. So that all men are influenced more or less by favors, are they not?

Mr. Clement. Well, in a sense, I would say yes.

Mr. Folk. Some influenced more and some less——

Mr. Clement. And, in another sense, I would say no. I do not think any honest man would intentionally do a wrong because somebody had shown him a favor. I do not mean to be understood as saying that. But yet we are all grateful, and should be, for favors.

Mr. Folk. How could that gratitude be expressed by a legislator, so far as a railroad is concerned?

Mr. Clement. How could it? Well, it could be expressed in more than one way. Do you mean in the capacity of a legislator?

Mr. Folk. Yes. Legislative questions are largely matters of policy and not matters of right or wrong, are they not?

Mr. Clement. Certainly; yes, sir.

Mr. Folk. Now, then, the legislator has a question before him of policy concerning railroads; he feels under obligation by reason of favors; he is influenced to some extent, is he not, not to do anything wrong, but in determining merely a question of policy?

Mr. Clement. Well, I wouldn't want to go into detail, but I have seen that tried, where the men who had railroad passes in their pocket—why, they were more inclined to vote on some questions against what the railroad might feel was against them, while the other fellow would go the other way. It does not necessarily follow, I think, because——

Mr. Folk. Mention some instance.

Mr. Clement. I remember Senator Church—I believe he is present——

Mr. Folk. That same man who refused a pass?

Mr. Clement. Yes; and I remember another man—away back when I was in the legislature 18 or 20 years ago—a man of very high type, was a brother to United States Senator Bate; he was a member of the senate, and I think he refused to accept a pass, and I never noticed any difference on those questions with these men except on matters that came up in the last legislature that I felt like perhaps ought to be opposed, while my colleague, Senator Church, felt the other way.

Mr. Folk. What were those matters?

Mr. Clement. Well, as I now recall, matters came up about the workmen's compensation act and also the fellow-servant act, for which I voted when I was there before, and never have missed an opportunity to vote for it. I remember there was some difference of opinion as between myself and Senator Church on that question.

Mr. Folk. How about the Broad Street bill; were you in favor of that?

Mr. Clement. The Chattanooga——

Mr. Folk. Yes, sir; do you recall that?

Mr. Clement. I don't remember that bill ever coming up or not—I mean for a vote in the legislature—and I am not sure about that. However, I have a very distinct recollection of a sharp issue being made in that Broad Street bill in which a compromise decree was presented to the senate, and it was argued that Chattanooga settled its right and conceded its right in the settlement of that lawsuit many years ago. I know that influenced me in that case, and I think it did a number of other men.

Mr. FOLK. You voted against that bill?

Mr. CLEMENT. I don't remember whether it came up, but I should have voted against it had it come up; but I am not sure. That was in 1913. I know it was up and discussed, but whether or not it came up in the senate I don't remember just now; but I was against the bill, and that was the reason why.

Mr. FOLK. Do you know whether or not the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway opposed that bill?

Mr. CLEMENT. Well, my information was that the N. & C. did. I never heard, so far as I now recall, the L. & N. connected with it.

Mr. FOLK. How were you informed, and by whom, that the N. & C. opposed the bill?

Mr. CLEMENT. My recollection is, Gov. Folk, that the matter was discussed in the committees, and I believe that the lawyers appeared before the committees; I am not sure about that, but I think they did, and exhibited these decrees or settlements that I have referred to.

Mr. FOLK. Speaking of Mr. Hudson, where is he stationed at the capitol during the sessions? Has he any regular stopping place over there?

Mr. CLEMENT. You mean in the city or at the capitol building?

Mr. FOLK. At the capitol building.

Mr. CLEMENT. If he has any stopping place there I don't know it.

Mr. FOLK. He just keeps going, does he?

Mr. CLEMENT. Well, I say I suppose you mean by that, Governor, that he has some office or place to stay there; that is what I understood.

Mr. FOLK. Where does he usually make his headquarters there, if he does?

Mr. CLEMENT. If he has any headquarters there I don't know about it.

Mr. FOLK. You spoke of these farmers going to these institutes. Could any farmer get a pass to go to these institutes?

Mr. CLEMENT. I could not tell you about that. I understood that the delegates selected were the ones the passes were issued to.

Mr. FOLK. Selected by whom?

Mr. CLEMENT. By the farmers' institute, or the farmers' organizations. That is my information. I don't know who issued these.

Mr. FOLK. That is all.

(Witness excused.)

H. T. STEWART was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your full name?

Mr. STEWART. Hoyte T. Stewart.

Mr. FOLK. Where do you live?

Mr. STEWART. Woodbury, Cannon County.

Mr. **Folk.** What is your occupation?

Mr. **Stewart.** I am a lawyer and State-revenue agent for middle Tennessee.

Mr. **Folk.** Are you a member of the legislature at this time?

Mr. **Stewart.** I am.

Mr. **Folk.** Of the lower house?

Mr. **Stewart.** Yes.

Mr. **Folk.** How long have you been a member of the legislature?

Mr. **Stewart.** Since 1909. I was a member of the lower house in 1909 and 1911, and member of the senate in 1913, and a member of the house at present.

Mr. **Folk.** Did you receive an annual pass from the Louisville & Nashville Railroad after your election to the house?

Mr. **Stewart.** Yes, sir.

Mr. **Folk.** And from what other roads?

Mr. **Stewart.** Do you mean this legislature?

Mr. **Folk.** Yes, sir, or at any time.

Mr. **Stewart.** I had an annual pass from the L. & N., the N. & C., and Southern, and part of the time from the Tennessee Central, but not recently.

Mr. **Folk.** For how many years have you had the annual over the Louisville & Nashville Railroad?

Mr. **Stewart.** I could not be sure, Governor, but I think for about seven years.

Mr. **Folk.** Since you were first elected?

Mr. **Stewart.** I could not be positive, but that is my best recollection.

Mr. **Folk.** You do not represent the railroad?

Mr. **Stewart.** No; I live in a county where they have not any roads.

Mr. **Folk.** Where they have not any?

Mr. **Stewart.** Yes, sir.

Mr. **Folk.** You requested a large number of passes from the N., C. & St. L. during the year 1913?

Mr. **Stewart.** Quite a good deal; yes, sir.

Mr. **Folk.** About 400?

Mr. **Stewart.** I have no idea.

Mr. **Folk.** Do you recall the antipass bill coming up in the legislature?

Mr. **Stewart.** What time?

Mr. **Folk.** During any session that you attended?

Mr. **Stewart.** Yes, sir.

Mr. **Folk.** Were you opposed to that or in favor of it?

Mr. **Stewart.** Opposed to it.

Mr. **Folk.** The platform on which you were elected declared in favor of that measure, did it not?

Mr. **Stewart.** Well, the platform of the State Democratic convention declared in favor of the antipass law, and also the Republican convention, I believe; yes, sir.

Mr. **Folk.** Why did you feel at liberty to disregard this plank in your platform?

Mr. **Stewart.** Well, Governor, the platforms in Tennessee for the last seven years have not amounted to very much, and there has been only, during that time, during my legislative career, two political issues in Tennessee.

Mr. **Folk**. You think platforms are made to get in on and not to stand on?

Mr. **Stewart**. No, sir; I do not.

Mr. **Folk**. And they are not binding, according to your ideas?

Mr. **Stewart**. I did not think my people were in favor of it.

Mr. **Folk**. You think the pass system, then, is a good one, do you not?

Mr. **Stewart**. Well, I wouldn't say absolutely it was a good one or a bad one. I think the total abolition of the free-pass system in Tennessee would be a handicap.

Mr. **Folk**. A handicap?

Mr. **Stewart**. Yes, sir; the total abolition.

Mr. **Folk**. Why?

Mr. **Stewart**. Well, in the first place, the constitution of 1870 fixed the compensation of members of the general assembly at $4 per day, which is no compensation, and the pass that they have over the railroad, if they are honest men, I don't think it would affect them in their vote and it saves them a good deal of expense.

In the second place, I think it would be very unfortunate to the farmers in Tennessee to deprive them of the pass. I think that the N., C. & St. L., I know more about that especially, as that is in my county, have done a great deal for the farmers in the last six or seven years by establishing experimental stations and agricultural trains and giving passes to the farmers of the State to attend the farmers' convention, which meets once a year in each grand division of the State, and hundreds of farmers attend these conventions on account of these passes that would not attend otherwise, and I think for that reason it has done a great deal of good.

Mr. **Folk**. Why not pass a law requiring the railroads to give the members of the legislature free transportation and to give farmers free transportation, so they would be under no obligations to the carriers by accepting free transportation?

Mr. **Stewart**. If you could pass a law of that kind that would be constitutional it might be all right. I think it would be class legislation; that is my opinion of it.

Mr. **Folk**. They have such laws in some States. Do you think that members of the legislature are influenced at all by the fact that they receive favors in the form of free transportation from the railroads?

Mr. **Stewart**. I can speak only for myself. I am not.

Mr. **Folk**. Do you have any feeling of gratitude for these favors at all?

Mr. **Stewart**. No, sir.

Mr. **Folk**. None whatever?

Mr. **Stewart**. That has been a custom in Tennessee ever since I can remember. I know representatives of senators from my county before I was elected would give them to me and other constituents, and they were requested by me and accepted, and it has been a custom and habit from time immemorial, I suppose.

Mr. **Folk**. You think it has been merely a custom, and therefore you are under no obligation by following this custom and receiving these favors?

Mr. **Stewart.** I am not.

Mr. **Folk.** You are a lawyer, you say?

Mr. **Stewart.** Yes.

Mr. **Folk.** If you were suing a railroad, do you think you would have as good a chance before a jury every member of which had a pass in his pocket as before a jury without passes?

Mr. **Stewart.** If they were gentlemen of integrity; yes, sir.

Mr. **Folk.** Everything else being equal, you think that the pass in the pocket of each juror would cut no figure?

Mr. **Stewart.** I do not think it would make any difference at all if they were men of honor and integrity, as I stated.

Mr. **Folk.** The same class of men composing the jury, one with passes and one without passes, you would have no objection to the jury having the passes?

Mr. **Stewart.** Well, if they were not men of integrity I wouldn't want them either way, with a pass or without it.

Mr. **Folk.** Well, assuming that they are high-minded, honest men, but human, influenced to some extent by favors—and some people are, you know, do you not?

Mr. **Stewart.** I do not. If they realize the sacredness of oath, I do not think it would make a particle of difference.

Mr. **Folk.** Did you ever hear of a man who was influenced to some extent by favors received?

Mr. **Stewart.** In what way? A public official?

Mr. **Folk.** Yes; or any kind of favor.

Mr. **Stewart.** No; not if he was honest, I did not. I have heard of a lot of them being crooked, of course.

Mr. **Folk.** So if you were sitting as a judge, and a jury before you were to render a verdict in favor of a railroad, you would not consider a motion to set aside that verdict because each member of that jury had a pass in his pocket from the railroad, would you?

Mr. **Stewart.** I would act on the facts in the case and the law that was applicable.

Mr. **Folk.** Assuming it was shown to you that each member on that jury had a pass from the railroad in his pocket, you would not consider that at all material?

Mr. **Stewart.** No; I would act on the facts. If I thought the facts warranted it, I would let it stand, and if not, I would set it aside.

Mr. **Folk.** But that fact would not be at all material, in your mind?

Mr. **Stewart.** No.

Cross-examination:

Mr. **Waller.** Did you ever hear of a jury in Tennessee, or anywhere else, each one of whom had a pass in his pocket?

Mr. **Stewart.** I did not.

Mr. **Waller.** Can you scarcely conceive of such a condition of affairs as that?

Mr. **Stewart.** I would not think so; no, sir.

Mr. **Waller.** Mr. Stewart, you say it has been a custom for a long time. I want to ask if, in view of that custom, there was discrimination made between different members of the legislature, so far as you know?

Mr. **Stewart.** I never heard of it.

Mr. Waller. All of the members of the legislature that wanted them got them?

Mr. Stewart. That has been my understanding; yes, sir; regardless of their position.

Mr. Waller. That is all.

Redirect examination:

Mr. Folk. Well, you were asked if you could conceive of a jury every member of which had a pass in his pocket. Can you conceive of a legislature every member of the legislature with a pass in his pocket?

Mr. Stewart. Yes, sir.

Mr. Folk. Yes, sir?

Mr. Stewart. I say every member. I do not know that every member has, but practically all.

Mr. Folk. But you can conceive that such a thing is possible?

Mr. Stewart. Oh, yes, sir.

(Witness excused.)

Robert A. Elkins was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Folk. What is your full name?

Mr. Elkins. Robert A. Elkins.

Mr. Folk. Where do you live?

Mr. Elkins. At Dresden, Tenn.

Mr. Folk. What is your occupation?

Mr. Elkins. I am a lawyer.

Mr. Folk. Are you a member of the present General Assembly of Tennessee?

Mr. Elkins. I am.

Mr. Folk. How long have you been a member of the assembly?

Mr. Elkins. When I finish this term it will have been four years; two terms of two years each.

Mr. Folk. Did you receive an annual pass from the Nashville, Chattanooga & St. Louis Railway after your election to the legislature?

Mr. Elkins. I did, and before, too.

Mr. Folk. How long before?

Mr. Elkins. I think a year or so, probably, Governor.

Mr. Folk. What was the occasion for sending you a pass a year or so before your election?

Mr. Elkins. I was attorney for the N., C. & St. L. in my county; local counsel.

Mr. Folk. How long had you been counsel?

Mr. Elkins. My recollection is since 1910 and 1911; that is, I was in a way. Judge Barr has moved to Nashville, and after that I retained a relation with the railroad company.

Mr. Folk. Did you try cases for the railroad?

Mr. Elkins. Yes, sir.

Mr. Folk. And you still are their local counsel there?

Mr. Elkins. I am; yes, sir.

Mr. Folk. Mr. Elkins, will you tell us whether or not you consider the pass system as a good or bad thing, from a public standpoint?

Mr. ELKINS. I think that depends, Governor. I think in some instances the pass is not a bad thing. Of course, if the pass is used corruptly, then it is a bad thing. Now——

Mr. FOLK. What do you mean by a pass being used corruptly?

Mr. ELKINS. If the receiver of a pass acted improperly on account of having received that pass, then, of course, that would be a bad thing.

Mr. FOLK. Did you ever hear of a receiver of a pass acting improperly?

Mr. ELKINS. No, sir; I did not.

Mr. FOLK. Never heard of such a thing?

Mr. ELKINS. No, sir.

Mr. FOLK. Then, according to your idea, the pass system is a good thing?

Mr. ELKINS. I said it depended on how it was used. I can give you instances in which I think it has been beneficial.

Mr. FOLK. You said if it was used improperly it would be a bad thing?

Mr. ELKINS. Yes, sir.

Mr. FOLK. But you never heard of a case where it was used improperly?

Mr. ELKINS. No; I have not; that is, to my knowledge.

Mr. FOLK. Nearly every member of the legislature has a pass, has he not?

Mr. ELKINS. I can not say.

Mr. FOLK. Do you know of any member who has not?

Mr. ELKINS. No, sir; I have not asked any member.

Mr. FOLK. Do you know a former member of the legislature by the name of Harry Williamson?

Mr. ELKINS. Yes, sir.

Mr. FOLK. Do you know whether or not he had a pass?

Mr. ELKINS. I can not say as to that. I may have seen his pass. I can not now recall.

Mr. FOLK. Do you know whether or not his pass was taken away from him when he voted against a bill that the railroads wanted?

Mr. ELKINS. No, sir; I don't know that. I never heard of it before.

Mr. FOLK. That is all.

Mr. WALLER. That is all, Senator.

(Witness excused.)

THOMAS J. WALSH was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Where do you live?

Mr. WALSH. At Humboldt, in Gibson County.

Mr. FOLK. What is your occupation?

Mr. WALSH. I am a lawyer.

Mr. FOLK. You represent the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway as a lawyer?

Mr. WALSH. I do not.

Mr. FOLK. Are you a member of the present General Assembly or were you a member of any former General Assembly of the State of Tennessee?

Mr. Walsh. I am not a member of the present general assembly. I was a member of the house of representatives in 1905 and a member of the senate in 1913.

Mr. Folk. Did you receive an annual pass from the Louisville & Nashville Railroad Co. after your election to the senate?

Mr. Walsh. Yes, sir; I don't remember just at what time, whether it was before I came to Nashville and was sworn in, or afterwards. I received one, though, about the time I came, probably before.

Mr. Folk. Did you also have an annual over the Nashville, Chattanooga & St. Louis Railway?

Mr. Walsh. Yes, sir.

Mr. Folk. And what other railroads furnished you with annuals?

Mr. Walsh. Well, I think I had an annual, or a pass for part of the year, over the Southern. I think it was an annual; and over the Tennessee Central; but I do not recall ever using those passes. They were running east from Nashville and in the eastern part of the State, and I had no occasion to use them.

Mr. Folk. Did you request these passes, or were they sent to you without request being made?

Mr. Walsh. I do not remember that I requested the passes at that time. I have requested passes, though, at different times.

Mr. Folk. During the year 1913 you made a large number of requests on the Nashville, Chattanooga & St. Louis Railway for local or trip passes?

Mr. Walsh. Yes, sir; I did.

Mr. Folk. In fact, the record states you made 930 applications and received 930 trip passes.

Mr. Walsh. Yes, sir; I——

Mr. Folk. Would you say whether or not that is approximately correct?

Mr. Walsh. I think that is a conservative estimate of the number. I am inclined to think so.

Mr. Folk. Would it be conservative also to estimate the value of those passes at $7,561.71?

Mr. Walsh. Well, I have not stopped—I never thought about the value of them. I never thought of it, but I imagine it would run up to that amount.

Mr. Folk. Would it strike you that $7,500 worth of trip passes is pretty large for one State senator to get from one railroad in one year?

Mr. Walsh. Yes, sir; it does look a little large, of course; but I was obtaining those passes at the request of constituents, who would write me and——

Mr. Folk. They must have bombarded you very fiercely.

Mr. Walsh. They did; as one of the members said this morning, he felt in need of a secretary. I had to get a secretary to help send mine out part of the time.

Mr. Folk. After you ceased to be a member of the legislature, did you still continue to hold your annual pass on the Louisville & Nashville Railroad?

Mr. Walsh. Well, my recollection is now that I had an annual pass until December 31, 1914.

Mr. Folk. That is, when your term expired?

Mr. Walsh. Yes, sir; that is, the end of the two years.

Mr. Folk. Your pass expired the same minute your term expired, did it not?

Mr. Walsh. Yes; the last day of the year.

Mr. Folk. And the last minute?

Mr. Walsh. The last minute, rather; perhaps so.

Mr. Folk. You did not get $7,561 worth of trip passes last year, did you?

Mr. Walsh. No, sir; not near so many. Occasionally I have requested passes for myself and occasionally for friends; sometimes I have asked at times when they were not issued, and at other times I have requested them for close friends, who would insist that I ask for them, since I went out of office, and they have issued a few that way.

Mr. Folk. Probably half a dozen?

Mr. Walsh. Yes, sir; at least that many.

Mr. Folk. Instead of 930, six, which makes a difference between in office and out of office.

Mr. Walsh. I don't know the number. I have always objected asking for them at all; I have always tried to avoid having my friends even making a request for them.

Mr. Folk. Well, this clamorous mob of pass applicants disappeared when your term of office expired, did it not?

Mr. Walsh. Yes, sir; largely.

Mr. Folk. And they were applying to you because they knew by reason of the fact that you were a legislator, that you had a peculiar and particular influence with the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway?

Mr. Walsh. Oh, I think they had that idea. I do not think there is any doubt about that, they knew the custom for years had been the senators and representatives could secure passes, and I am sure they felt I could secure them, was the only reason they had for asking.

Mr. Folk. If the Nashville, Chattanooga & St. Louis Railway favored you while you held office, is it not fair to assume you were favored because you held office?

Mr. Walsh. Well, that might be a fair assumption. Still it might be construed as following out a custom of long years standing, too, on their part.

Mr. Folk. It is fair to assume that you were favored because you held office?

Mr. Walsh. I think so. I don't think there is any doubt about that.

Mr. Folk. Do you know anything about receiving requests for passes from public officials?

Mr. Walsh. Do you mean personally or from other parties?

Mr. Folk. From any public officials?

Mr. Walsh. Well, I don't know personally, except rumors. I heard some rumors about passes, but I don't know of anybody that has asked for one recently.

Mr. Folk. Have you seen any requests recently for passes made by any officials?

Mr. Walsh. Well, I don't recall any right recent requests that I have seen made of any official. If I had some way of refreshing my memory I might know, but I do not recall anybody now that I——

Mr. Folk. From your knowledge and very broad experience, would you say that the pass system is a good or a bad thing for the the people of the State?

Mr. Walsh. Well, I have been inclined to the idea that it is a bad system, and the older I get the more I am inclined that way. I do not know that there have been any very bad effects in the past growing out of it, but I think the system is a bad system, I am frank to express my views.

Mr. Folk. Why do you think so?

Mr. Walsh. Well, men might be influenced, not intending to be influenced.

Mr. Folk. It is human nature to be influenced by favors, is it not?

Mr. Walsh. That is a natural inclination of humanity.

Mr. Folk. Not that a man intentionally does wrong.

Mr. Walsh. That is true.

Mr. Folk. Nor would he do anything he knows to be wrong.

Mr. Walsh. That is true.

Mr. Folk. But a sentiment of gratitude would cause him in a matter of policy to lean toward the person doing him a favor?

Mr. Walsh. Well, yes, sir; I think that is calculated to have that effect sometimes.

Mr. Folk. Then, too, the transportation of a railroad is not the private property of the railroads to give away as they please, but that transportation is held in trust for the public and——

Mr. Jouett. We object to that argument and statement.

Mr. Folk. I am asking the witness for his views.

Mr. Jouett. But you are making the statement as argument at the same time.

Mr. Folk. No.

Mr. Walsh. I think that could be argued that way, Governor, but I do not think I am in a position to testify whether that is a fact or not. Now, of course, the railroads, I have always thought owned—of course, they are public corporations, but I have always thought they owned their tickets and they owned their trains and their right of way and railways, and they had only certain laws to obey and certain laws to comply with. Now, whether or not the public have an interest in their tickets and their passes, I have never stopped to consider. I have never thought about the question.

Mr. Folk. Railroad officials occupy a trust relationship to the public, do they not?

Mr. Walsh. Yes, sir; in a way they do. They might be called quasi public officials in a corporation.

Mr. Folk. Did this antipass bill come up while you were a member of the legislature?

Mr. Walsh. Which pass bill?

Mr. Folk. A bill to prohibit free passes in Tennessee.

Mr. Walsh. There was a bill introduced in one or both houses, but my recollection is now that it never was acted upon in the senate; I think it was acted upon in the house.

Mr. Folk. Do you recall whether you favored or opposed this measure while you were a member?

Mr. Walsh. I do not now recall how I voted on the measure.

Mr. FOLK. But, as I understand you, although in the year 1913 while you were a member of the assembly you requested and secured more than $7,000 worth of trip passes, you would, if a member of the assembly now, vote for an antipass bill, because you believe that the pass system is an evil one?

Mr. WALSH. I think so. I think if I ever was a member of the legislature again I would vote for an antipass bill.

Mr. FOLK. That is all.

Mr. WALSH. And I would probably have done so at the time had it not been for the fact that the people in my county and most rural counties have not cared much in recent years about legislation of that character. There is no real sentiment either for or against railroads in the majority of rural counties, especially in my county.

Cross-examination:

Mr. WALLER. Mr. Walsh, as I understand, your constituents in making these requests were pursuing a custom that had long been followed in the State of Tennessee?

Mr. WALSH. Yes, sir; it has been a good many years. It was followed when I was first in the legislature, 12 or 14 years ago, and had been before that time to some extent; I do not know just how extensive it was, though.

Mr. WALLER. But there was such a custom?

Mr. WALSH. Yes; there was a custom.

Mr. WALLER. And there had been a custom of public officials using transportation; at least a great many of them; I will not say all—using transportation over railroads?

Mr. WALSH. Yes, sir; I think the majority of public officials did use transportation over railroads.

Mr. WALLER. Now, would you regard any of those persons as corrupt because they used transportation? Has anyone in Tennessee, so far as you know, regarded an official as corrupt because he had used transportation over railroads?

Mr. WALSH. I do not know just any individual who has been regarded that way, Judge. I have heard it said often that judges ought not to have passes, by good men.

Mr. WALLER. Now, you are a lawyer. Had you not rather try a case before a judge without a pass than with one, if you represented the railroad?

Mr. WALSH. Well, sometimes a man that has a pass in his pocket and knowing that there is some suspicion which would be cast upon him if he made a decision that was anyways likely to be criticized, he might lean against you with it. I have thought about that at times. I do not mind trying a lawsuit before the judges that I have practiced before because they have had passes. I sometimes think I would a little bit rather they would not have passes in a suit in which the railroad is involved, if I am on the opposite side.

Mr. WALLER. Do you represent any railroad in Gibson County?

Mr. WALSH. I tried some matters for the Mobile & Ohio Railroad Co.

Mr. WALLER. Now, returning to these passes, these constituents, in pursuance of their custom, bombarded you, as you say, with these requests?

Mr. WALSH. Oh, yes; they made——

Mr. **Waller.** And then you say you are embarrassed and won't ask for them, and then you asked the railroad for them?

Mr. **Walsh.** Yes; my constituents felt like I ought to get them for them, and they embarrassed me by writing—sometimes I would get as high as 40 letters a day from Gibson County, and I would have to—I would generally make a list and either give it to one of the gentlemen connected with the railroad at the capitol and send it down to the clerk or send it down to your office or take it down in person sometimes.

Mr. **Waller.** It was a system that it was difficult to get away from, because it had been used for a long time?

Mr. **Walsh.** Very difficult.

Mr. **Waller.** Now, I will ask you this: Gov. Folk has insisted that the transportation which you requested was worth $7,000. Now, was it worth $7,000 to you?

Mr. **Walsh.** No; it was not worth a penny to me. It cost me more than I made in the senate to get them and send porters after them.

Mr. **Waller.** What per cent of those persons would you estimate would have come to Nashville if they had not got free transportation?

Mr. **Walsh.** I should only guess at that, and a guess would not be worth very much. Now, I remember in the early part of 1913 and the early part of every year the Masons have a big meeting here, and I secured passes for probably 25 or 30 Masons in Gibson County, and they all came, and they probably would have bought tickets. Outside of that I don't know. Out of the 900 they say which were issued to me, whether there would have been over 300 of them in Nashville had they not got passes, I can not say, though.

Mr. **Waller.** The idea is that the constituents, some of them, want to confer with you about legislation, and others want to come to Nashville while the legislature is in session?

Mr. **Walsh.** Yes; a good many of them come in order to confer with you, and others just want to make the trip. A large number of them just want to make a few days' trip to Nashville to see the legislature in session.

Redirect examination:

Mr. **Folk.** Mr. Walsh, were there any lobbyists in the legislative halls while you were a member of the general assembly?

Mr. **Walsh.** Well, Governor, I don't know whether they were lobbyists or not. Both railroad offices here have men connected with them that are clever gentlemen and affable gentlemen, and they were at the capitol a good deal of the time during the sitting of the legislature.

Mr. **Folk.** Do you know Mr. Hudson?

Mr. **Walsh.** Yes, sir; I know Mr. Hudson quite well.

Mr. **Folk.** Would you characterize him as a lobbyist?

Mr. **Walsh.** Well, I myself have never termed him as a lobbyist, yet he was termed a lobbyist there by a good many members.

Mr. **Folk.** He devoted his time to looking after legislative matters for the railroads?

Mr. **Walsh.** Yes, sir; he was there looking after matters. I know he generally got copies of bills that affected the railroad companies.

I suppose every interest in the State did likewise, though. I think every bill that was introduced on any subject affecting any particular interest copies generally went to the head officers of the interest affected.

Mr. **Folk.** Do you know whether or not Mr. Hudson attended political conventions in the interest of his railroad?

Mr. **Walsh.** Well, I would not attempt to say just what he attends them for, Governor, but he attends; I think he has attended every State convention that I have attended in the last 10 years.

Mr. **Folk.** Do you understand by lobbyist—I do not mean one who appeared before legislative committees, but one working secretly for the railroad; do you think Mr. Hudson came in that class?

Mr. **Walsh.** I do not know to just what extent he worked. He was there and talked to members, both at the capitol and around the hotels, and he had a good many personal friends always in the legislature, and he was with them more or less.

Mr. **Folk.** Did Mr. Hudson entertain legislators?

Mr. **Walsh.** Well, he was with legislators at dinners and theater parties, but I don't know that he ever bought any tickets. I think I have been in parties with him, but I don't know that he was doing the entertaining. I think, perhaps, I have taken him at times.

Mr. **Folk.** Did he ever entertain you while you were a member of the general assembly?

Mr. **Walsh.** I do not recall that he ever took me out for the express purpose of entertaining me. We have been together at the same dinner table and probably at the same theater party. At times, though, I have paid the bills and at times Mr. Hudson has, and at times other gentlemen in the same parties have. I don't think he ever took me out for the purpose of influencing me one way or the other.

Mr. **Folk.** He did not tell you that?

Mr. **Walsh.** No; he did not tell me that.

Mr. **Folk.** Do you know Mr. McConnell?

Mr. **Walsh.** Yes.

Mr. **Folk.** Did he appear at any time, or rather represent the railroad at any time other than before a committee?

Mr. **Walsh.** Well, his activities were just about what Mr. Hudson's were; they were together a good deal of the time at the capitol.

Mr. **Folk.** They worked together in the railroad interests?

Mr. **Walsh.** Apparently they did.

Mr. **Folk.** Is it not a fact that the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been very active in the political affairs of Tennessee?

Mr. **Walsh.** Well, the gentlemen connected with the railroad companies in Tennessee have been more or less active in party affairs.

Mr. **Folk.** Of course, the railroad can only act through its representatives?

Mr. **Walsh.** Yes; that is true.

Mr. **Folk.** Is it or is it not your understanding that these two railroads are very active in politics in Tennessee?

Mr. **Walsh.** Well, I think they are showing a little activity in politics in Tennessee.

Mr. **Folk.** You think they are showing it?

Mr. **Walsh.** Yes, sir; I think so.

Mr. FOLK. They have shown it also, have they not?

Mr. WALSH. Well, perhaps so. I don't know just how much.

Mr. FOLK. But that is your impression?

Mr. WALSH. Yes, sir.

Mr. FOLK. Now, you spoke of the fact that very few of these 930 people whom you had transported free would have used the railroad had they not received free transportation. Were most of these people poor people, paupers?

Mr. WALSH. Some of them were very poor, while others were substantial men, and quite a number of those that I asked——

Mr. FOLK. In fact, most of them are in unusually good circumstances, are they not?

Mr. WALSH. Well, I don't know. I would have to look at the list to say now. I do not recall just all the men.

Mr. FOLK. As a matter of fact, this list contains the names of many of your most prominent citizens?

Mr. WALSH. Yes, sir.

Mr. FOLK. And influential citizens?

Mr. WALSH. Yes, sir; I am sure of that.

Mr. FOLK. Well, they certainly would have come to Nashville if the could not have gotten a pass, would they not?

Mr. WALSH. Quite a number of them would; yes, sir. We had during 1913 a little unusual state of affairs. We had three sessions of the legislature. We had the regular session and two extra sessions and there was a good deal of political interest in every session, and many men came here just to come and see the fights we had in the legislature.

Mr. FOLK. You might glance over this list of your beneficiaries and see if you recognize any of them.

Mr. WALSH. Yes; I recognize all this list.

Mr. FOLK. There are very few paupers on that list.

Mr. WALSH. I do not know that there is a single pauper on it. There are some people here of very moderate circumstances, some very poor men and some very poor women.

Mr. FOLK. But for the most part they are influential citizens?

Mr. WALSH. I think a majority of them might be termed people of influence in Gibson County.

Mr. FOLK. In other words, where one pass is given for the purposes of charity at least three passes are given to people of influence?

Mr. WALSH. Yes; on my list that is true. There are some charity passes here.

Mr. FOLK. That is all.

Recross-examination:

Mr. WALLER. It is true that even a person of moderate means or in well-to-do circumstances might not take the trip unless he had some special business or unless he could get free transportation; is not that true?

Mr. WALSH. Yes; I think many men on that list would have stayed at home that were well able to pay their way had it not been for the pass. I do not think they would have come to Nashville if they would have had to pay their way.

Mr. WALLER. Gov. Folk has termed Mr. Hudson, in a question to you, as a lobbyist. Have you seen a great many citizens interested at the capitol and there on different bills in which they were interested?

Mr. **Walsh.** Yes, sir; I have.

Mr. **Waller.** Have you not seen there the superintendents of public instruction in various counties, when the school interests of the county were affected, talking to members of the legislature with a view to getting such bills passed?

Mr. **Walsh.** Yes, sir; I think they were the strongest lobby that was around the capitol during my time.

Mr. **Waller.** Now, how many committees are in the senate; do you know how many various committees they had?

Mr. **Walsh.** I do not recall now, but there are 10 or 15.

Mr. **Waller.** And a great number in the house?

Mr. **Walsh.** Yes, sir.

Mr. **Waller.** Now, what is the order of a bill in the legislature, when it is introduced first?

Mr. **Walsh.** Well, on introducing it it passes first reading without objection ordinarily, and the next day it comes in its turn and is passed on second reading and referred to some committee to be acted upon by the committee and reported favorably or unfavorably or amended and reported.

Mr. **Waller.** If there are a number of bills affecting any interests introduced in the legislature, would not the most effective way of keeping up with such bills be to have some one there to get a copy of the bills and then to see to what committee it has been referred, and then to see the chairman of that committee, when his committee would meet to consider that bill; could one keep up with them without having some one to keep in touch with it in that way?

Mr. **Walsh.** I think not. That is about the only way they could keep up with a bill. And a good many hearings were obtained on different bills before committees by somebody taking an active interest or looking after them in that way and getting a time set for hearing them.

Mr. **Waller.** And anyone who was interested would have to know when and where that committee would meet when that bill was to be discussed?

Mr. **Walsh.** Yes, sir; and anybody that wanted to appear for or against any bill had a right to appear before the committees.

Mr. **Waller.** And that was true of both in the senate and in the house?

Mr. **Walsh.** Yes; that is true.

Mr. **Waller.** Now, there are a great many committees in the house?

Mr. **Walsh.** Yes; a large number.

Mr. **Waller.** How many members in the house?

Mr. **Walsh.** There are 99 members.

Mr. **Keeble.** Mr. Walsh, you have been asked to define the definition of lobbyist. I believe Gov. Folk described anyone as a lobbyist who went in the halls of the legislature or elsewhere and talked personally with the members. Is that the way you defined it, Governor?

Mr. **Folk.** That is not exactly the definition, but you can ask the question.

Mr. **Keeble.** I would like you to define it right now.

Mr. **Folk.** A lobbyist is one employed by special interests and who talks with legislators in reference to bills pending before the legislature and acts for the special interests he represents in doing so, and does not appear in public hearings.

Mr. **Keeble.** Then, do you understand that anybody can be a lobbyist except to represent a corporation?

Mr. **Walsh.** Well, I understand there could be different kinds of lobbyists. There could be lobbyists for different interests. I think there could be lobbyists for school interests or any other interests as well as for railroad interests and corporation interests.

Mr. **Keeble.** Suppose a man is a supposed lobbyist who does not appear before a committee, but who goes privately to the legislators or goes about the legislative assemblies and into the house and senate to talk with them and keep up with the legislation; I will ask you to state to the commission if it is not a fact that there has hardly been an interest in the State of Tennessee, either incorporated or unincorporated, when they had bills there affecting them who have not sent representatives there and gone there personally from time to time to geep up with legislation and to talk with the members.

Mr. **Walsh.** Judge Keeble, I think that is true. I know at times when some matter of importance to different corporations or different interests was up they would soon have somebody on the ground to look after their interest. I do not know of any other interest that kept men there all the time that I now recall.

Mr. **Keeble.** I believe, Senator, that while you were in the senate in 1913 there was a great issue before the legislature as to whether certain law enforcement bills should be passed, is not that true?

Mr. **Walsh.** Yes, sir.

Mr. **Keeble.** That legislature met immediately after the last election of Gov. Hooper, in 1915?

Mr. **Walsh.** Yes, sir; the January following.

Mr. **Keeble.** You can instance that there was a law introduced, among other things, to provide that any 10 citizens might file a bill in any county where the liquor laws or other laws were violated and get an injunction and shut up the unlawful business. That was a part of it?

Mr. **Walsh.** Yes, sir; that was introduced for that purpose.

Mr. **Keeble.** There was also an ouster measure pending at that time which did not pass at that session?

Mr. **Walsh.** Yes; I think the ouster bill was introduced, but did not get very far on the calendar, is my recollection now.

Mr. **Keeble.** Well, it was not an uncommon occurrence for both men in private and public life during that session of the legislature to habituate both houses and talk and converse with legislators on that subject, was it?

Mr. **Walsh.** That was an everyday occurrence.

Mr. **Keeble.** An everyday occurrence?

Mr. **Walsh.** Yes.

Mr. **Keeble.** Men who were in public life and men who were in private life?

Mr. **Walsh.** Yes; that is true.

Mr. **Keeble.** It was common knowledge, I believe, at that time, for instance, that the mayor of Memphis practically spent most of his time at Nashville and at the capitol when those measures were pending?

Mr. WALSH. Yes, sir; the mayor was there a good deal.

Mr. KEEBLE. And the friends of the law-enforcement measures, the friends of the people representing that view, Gov. Hooper's wing of the party and the independent Democrats had their friends there from time to time.

Mr. WALSH. Yes, sir; they were there all the time and very active, too.

Mr. KEEBLE. And Mayor Howse at Nashville and his friends were there from time to time?

Mr. WALSH. Yes, sir; more or less; not as often perhaps as the other gentlemen of whom you speak and the other people.

Mr. KEEBLE. Well, did you ever see any man who held a public position in the State of Tennessee frequent the legislature besides the ones I have mentioned, during that time?

Mr. WALSH. Yes, sir.

Mr. KEEBLE. Well, name some of them.

Mr. WALSH. You mean, men holding public office?

Mr. KEEBLE. Yes; men of public affairs and of public office; did they go?

Mr. WALSH. Well, I saw there nearly every day, of course, the State officials, some of the men who have their offices in other parts of the State than Nashville, and I think I recall seeing during the session probably every Congressman from Tennesse and both United States Senators at times. I don't know how often; and judges and attorney generals.

Mr. KEEBLE. So that what I want to bring out by you is that whenever any class of people in the State were about to be affected either by the passage of legislation or the defeat of legislation, it has been, so far as you know, the common practice for all classes of people not only to appear before committees and argue their cases, but either to go in person or send representatives to keep up with the trend of legislative action.

Mr. WALSH. Yes, sir; that is the practice and has been the custom since I have been a member.

Mr. KEEBLE. And the more violent the issue and the more aroused the public interests were the greater the activity of the so-called lobbyists?

Mr. WALSH. Yes.

Mr. KEEBLE. And the greater the pulling and hauling of the legislators?

Mr. WALSH. Yes, sir.

Mr. KEEBLE. Is it not a fact that frequently during the sessions of the legislature at that time so great was the crowd of these people interested in these great measures that the houses had to be ordered cleared in order to transact business?

Mr. WALSH. That occurred very often.

Mr. KEEBLE. So you take it that they went there to keep up with what was going on, to see when these matters were coming up and to talk with members at critical times when the bills were about to be presented?

Mr. WALSH. Yes; that was the business of a part of them. Some of them were there to aid and encourage by their presence simply.

Mr. **Keeble.** The labor people kept their representatives there all the time while you were there?

Mr. **Walsh.** Yes.

Mr. **Keeble.** Organized labor had several men in Nashville keeping up with the legislature, just like Mr. Hudson did, did they not?

Mr. **Walsh.** Yes, sir.

Mr. **Keeble.** Now, then, another thing I would like to ask you. If, whenever, for instance, a bill was introduced affecting coal properties and mines, do you not remember that the mining interests sent their representatives to the capitol?

Mr. **Walsh.** Yes, sir; I remember some gentlemen—I do not recollect their names now—who would come down here occasionally from, I think, the eastern part of the State, principally.

Mr. **Keeble.** And the street car people always had their representative looking after legislation?

Mr. **Walsh.** Yes; they had representatives there part of the time. I remember seeing one or two gentlemen connected with the street car companies there at different times, but not anything like continuously, that I know of.

Mr. **Folk.** You spoke of the Congressmen appearing while some matters were before the legislature. Who were they representing?

Mr. **Walsh.** Governor, I do not know that they were representing anybody at all. I can not say that I ever saw a member of the Tennessee delegation trying to influence any particular member of the legislature.

Mr. **Folk.** They simply appeared in favor of the general public interest or the welfare of their party as they conceived it?

Mr. **Walsh.** I think that is the only interest they could have had in being there.

Mr. **Folk.** Do you see any analogy between these crowds of people appearing there on behalf of these public measures and individuals appearing for private interests and seeking legislation in favor of these private interests at the expense of the public?

Mr. **Walsh.** Well, there might be a difference.

Mr. **Folk.** Well, there is a difference, is there not?

Mr. **Walsh.** I think there is a difference, really. A man representing a private interest is going to be there and look after it and give it more time and work than a man looking after some public interest will, in my judgment.

Mr. **Folk.** Did you see any of these other people there as often as you saw Mr. Hudson, for instance, and Mr. McConnell?

Mr. **Walsh.** I do not recall that I did. Mr. Hudson and Mr. McConnell were there every day, I think; not all the time, but they were around the capitol some place at different times during the day.

Mr. **Waller.** Mr. Walsh, speaking of the question of passes, is that confined, as far as you know, alone to steam railroads, or do street railways give such passes to members of the legislature here at Nashville when it is in session, or do you know how that is?

Mr. **Walsh.** Well, sir, the street railway company in Nashville issued passes to members.

Mr. **Waller.** To members of the legislature?

Mr. **Walsh.** Yes.

Mr. **Waller.** Do you know through whom that was done?

Mr. **Walsh.** No, sir; I do not, except that they were issued at the office of the Nashville Street Railway & Light Co. here at Church Street, Judge.

Chairman **Meyer.** That suggests an additional question, then. Do the members of the legislature also receive free gas, free electricity, and free telephones?

Mr. **Walsh.** No; I have never heard of a member receiving anything free in that class.

Mr. **Waller.** There was a time, perhaps, when they got some free whisky, but not now.

Mr. **Walsh.** I think so, Judge.

Mr. **Waller.** That is all I wanted to ask.

Mr. **Folk.** Or free lunches?

Mr. **Waller.** No, sir; no free lunches.

(Witness excused.)

Chairman **Meyer.** We will take a recess of 5 minutes.

A. J. **Argo** was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk.** What is your full name?

Mr. **Argo.** A. J. Argo.

Mr. **Folk.** Where do you reside?

Mr. **Argo.** Trezevant, Carroll County.

Mr. **Folk.** What is your occupation?

Mr. **Argo.** Farmer.

Mr. **Folk.** Were you a member of the General Assembly of Tennessee at any time; and if so, when?

Mr. **Argo.** Yes, sir; I was a member of the lower house in 1911 and 1913.

Mr. **Folk.** After your election to the general assembly did you receive an annual pass from the Louisville & Nashville Railroad?

Mr. **Argo.** Yes, sir.

Mr. **Folk.** Did you receive an annual pass from the Nashville, Chattanooga & St. Louis Railway?

Mr. **Argo.** Yes, sir.

Mr. **Folk.** What other roads sent you annual passes?

Mr. **Argo.** The Southern and the Tennessee Central for the first year, and the second year I got an annual from the Southern and a pass from the Tennessee Central during the legislature.

Mr. **Folk.** Did you receive these passes before your election or after your election?

Mr. **Argo.** After my election I received the annual——

Mr. **Folk.** Did you come to Nashville after your election on the annual?

Mr. **Argo.** No.

Mr. **Folk.** You came on a trip pass?

Mr. **Argo.** Yes, sir; I wrote to Judge Waller for a trip pass, that I wanted to come up and make arrangements for my board, and a pass was sent me.

Mr. **Folk.** Did you request a number of passes during the year 1913 from the Nashville, Chattanooga & St. Louis Railway?

Mr. **Argo.** Yes, sir.

Mr. Folk. Several hundred?

Mr. Argo. I don't know how many. I know I did not make requests for near all the requests that I got.

Mr. Folk. Did they bother you a great deal—your constituents, requesting passes?

Mr. Argo. Some little bit; yes.

Mr. Folk. Did the antipass bill come before the lower house while you were a member of that body?

Mr. Argo. Yes, sir.

Mr. Folk. Did you vote for it or against it?

Mr. Argo. Well, now, in 1911 I don't know whether that come or not; I don't remember, but I remember it did come in 1913, and I voted for it.

Mr. Folk. You voted for the antipass bill?

Mr. Argo. In 1913; yes, sir.

Mr. Folk. Then you believe——

Mr. Argo. No; I will take that back. I voted against it. It was the fellow-servant bill that I voted for in 1913.

Mr. Folk. Do you think the pass system is good or bad from a public standpoint?

Mr. Argo. Well, I can not say, Governor. I do not consider that I am competent. The people seem to be greatly divided on that subject. I am confident that the majority of my constituents were for free passes.

Mr. Folk. The majority of your constituents?

Mr. Argo. Yes, sir.

Mr. Folk. Are in favor of the free passes?

Mr. Argo. Are in favor of the free passes. Well, there are a goodly number that oppose it. I don't consider that I am competent to judge or to say just what would be.

Mr. Folk. Do you think, if the free pass question were an issue in your county and you were advocating the receiving of free passes from railroads, and your opponent were opposing the receiving of free passes, that you would win on that issue?

Mr. Argo. I think I would; yes, sir. I am confident I would.

Mr. Folk. Why do you think the people of your county feel that way? How can they figure that a free pass benefits them unless they get the free passes themselves?

Mr. Argo. Well, because I suppose they are like myself. I have not seen, I don't consider, any ill effects from the free-pass system; and I think my constituents are a little like myself; they have not seen any ill effects from the system. And there are a good many of them down there that are poor people like myself, and they would never get—the way they put it to me, when the bill was up, they petitioned me to vote against it, and it usually came in in this way, they would say, "We poor devils would never get to Nashville"——

Mr. Folk. Talk a little louder, please.

Mr. Argo. They would come to me in this way; they would petition me to vote against it, and usually use this expression; they would say, "We poor devils would never get to come to Nashville if it was not for that pass system."

Mr. Folk. What did they want to come to Nashville for?

Mr. Argo. I suppose it is just like some of the rest of us, from curiosity, like a good many others. Some wanted to visit the legislature, and some had never seen the capitol of their State, and to take in the general situation.

Mr. Folk. So you believe the pass system has more of virtue than of vice in it?

Mr. Argo. Well, I won't say.

Mr. Folk. You believe your constituents think there is more of virtue than of vice?

Mr. Argo. Yes, sir. I was representing them, and believing as I did, that the majority of them favored it, I of course——

Mr. Folk. You had no objection to your constituents knowing that you used passes and always used them?

Mr. Argo. I have what?

Mr. Folk. You have no objection to your constituents knowing about the number of passes you receive?

Mr. Argo. They have no objection?

Mr. Folk. No; that you received so many.

Mr. Argo. No.

Mr. Folk. In fact, it would benefit you rather than hurt you, the knowledge that you had received so many passes for poor and deserving people in your county?

Mr. Argo. Yes, sir; I consider it would.

Mr. Folk. Why would all these people come to you to get their passes instead of going directly to the railroads?

Mr. Argo. Well, it is different; some would—as Brother Harris said this morning, I was their servant and they were going to use me. There are a great many people over the country, a great per cent of them, think it has been the custom to issue those passes ever since I can remember, and the people have got it in their minds that it is the custom, you know, and they have got it in their minds that when they elect a representative to the legislature, a large percentage of them think that the railroad turns over a blank book and all the thing he has to do, when they write him, is to sit down and fill out a pass and send it on.

Mr. Folk. Do you think it would be a good idea to do that?

Mr. Argo. Well, no; I don't think that would be a good idea.

Mr. Folk. And why not?

Mr. Argo. Well, because that would take him all the time.

Mr. Folk. It would take him too much time?

Mr. Argo. It would take him too much time; he would have to get about three secretaries. When a fellow gets a letter like some I got, "Please send me a pass for me and my family of eight," it would take a good deal of time.

Mr. Folk. They would write and come to you for passes because you were a member of the legislature?

Mr. Argo. I suppose so; and I was their servant, their representative up here.

Mr. Folk. And you could get the passes because you were a member of the legislature?

Mr. Argo. I suppose so; yes, sir.

Mr. Folk. Do you remember anything about an eminent-domain bill in 1911? Were you a member in 1911?

Mr. Argo. Yes. The which?

Mr. Folk. The eminent-domain bill.

Mr. Argo. No, sir; I do not.

Mr. Folk. To give the Louisville & Nashville Railroad the right to condemn certain property.

Mr. Argo. No; I don't remember that I do, Governor.

Mr. Folk. That is all.

Cross-examination:

Mr. Waller. Mr. Argo, as I understand you, your people, recognizing or knowing about this custom, sent these requests and you sent them to the railroad and asked for the transportation?

Mr. Argo. Yes, sir.

Mr. Waller. Now, there was no secret about that, was there?

Mr. Argo. No; none whatever.

Mr. Waller. All legislators were treated alike in that respect, so far as you know, were they not?

Mr. Argo. So far as I know.

Mr. Waller. Now, whether or not it is a good custom or a bad custom, that is another proposition; but it was a custom?

Mr. Argo. It was a custom; yes, sir. I told——

Mr. Waller. Now, Mr. Argo, what per cent do you suppose of those persons for whom you secured this transportation would have come to Nashville if they had had to purchase their tickets?

Mr. Argo. Well, I will say 10 per cent.

Mr. Waller. Ten per cent?

Mr. Argo. I think 10 per cent would be a reasonable per cent.

(Witness excused.)

James L. Cochran was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. Folk. What is your full name?

Mr. Cochran. James L. Cochran.

Mr. Folk. Where do you live?

Mr. Cochran. Union City, Obion County, Tenn.

Mr. Folk. What is your occupation?

Mr. Cochran. Retired; ex-farmer.

Mr. Folk. Ex-farmer? You are doing nothing?

Mr. Cochran. Whittling goods boxes, and candidate.

Mr. Folk. Sir?

Mr. Cochran. Whittling goods boxes, and candidate.

Mr. Folk. Candidate for what?

Mr. Cochran. State senate; telling people what a great fellow I am.

Mr. Folk. Have you ever been a member of the general assembly heretofore?

Mr. Cochran. Yes, sir.

Mr. Folk. During what years were you a member of that body?

Mr. Cochran. I was elected in 1890 to fill the unexpired term of Judge McCall, of Memphis, and then I was elected regular in 1890 again for a regular term and served in 1891. Then in 1900 I was elected to the State senate for Madison and Henderson Counties and served in 1901 and 1902. And then in 1912 I was elected floater from Obion, Lake, and Dyer Counties and served a term and was reelected to serve and am a member of the present legislature—five terms, sir.

Mr. **Folk.** After you were elected to the general assembly did you receive an annual pass from the Louisville & Nashville Railroad?

Mr. **Cochran.** Not the first time. I received one that lasted me until May, I believe—the 30th of May. That was the first pass I received. Afterwards I received annual passes.

Mr. **Folk.** That is, while you were a member?

Mr. **Cochran.** Yes, sir.

Mr. **Folk.** Did you have an annual when you were not a member?

Mr. **Cochran.** I did not.

Mr. **Folk.** So, as your term would expire, your pass would expire?

Mr. **Cochran.** That is the way it went.

Mr. **Folk.** While you were a member of the assembly did you request passes for others?

Mr. **Cochran.** I did; quite a number.

Mr. **Folk.** During the year 1913 do you recall that you made several hundred requests?

Mr. **Cochran.** Yes, sir.

Mr. **Folk.** Those were for influential citizens of your district?

Mr. **Cochran.** Some were quite so and others not so much so.

Mr. **Folk.** And these passes were given in a large part because they were people of influence?

Mr. **Cochran.** No, sir; not altogether; because I sent about as many passes to some young boys and girls and ladies, about as many as I did to men.

Mr. **Folk.** Ladies?

Mr. **Cochran.** Yes, sir; I am quite a ladies' man.

Mr. **Folk.** Where did you pass the ladies to?

Mr. **Cochran.** Well, they came up——

Mr. **Folk.** Did they come to Nashville also?

Mr. **Cochran.** Oh, yes; all of them came to Nashville. I did not ask passes for anywhere else—only Nashville and return.

Mr. **Folk.** Were you here at the time?

Mr. **Cochran.** Yes, sir; I was on Capitol Hill in the daytime, and nights I don't know where I was.

Mr. **Folk.** Mr. Cochran, from your experience would you say that the pass system is a good or bad thing, from the public standpoint? Of course, it is a good thing from your standpoint; we can see that.

Mr. **Cochran.** I once thought it was a good thing. I think it would be best to be abolished.

Mr. **Folk.** You do?

Mr. **Cochran.** I do.

Mr. **Folk.** With everything that goes with it?

Mr. **Cochran.** Everything; a clean sweep; everybody.

Mr. **Folk.** Why; tell us?

Mr. **Cochran.** Well, sir, there is an undersentiment among the people that every man that rides on a pass is bought or sold out, and to relieve that belief I think it is best to do away with it.

Mr. **Folk.** Is it human nature for the recipient of a favor to have some sense of gratitude toward the donor? <

Mr. **Cochran.** It is perfectly natural, sir.

Mr. Folk. And these passes do inspire in the hearts of those who receive them some gratitude, do they not?

Mr. Cochran. I suppose, everything being equal, a man would unconsciously be influenced somewhat. But between right men, or a corporation and men, I do not believe the pass with an honest man would have that influence.

Mr. Folk. Were you a member of the legislature when the free-pass bill came before the house?

Mr. Cochran. I was.

Mr. Folk. Did you favor or oppose that measure yourself?

Mr. Cochran. I voted for it.

Mr. Folk. That is all.

Cross-examination:

Mr. Waller. Mr. Cochran, you are an ex-Confederate soldier, are you not?

Mr. Cochran. I am.

Mr. Waller. These passes that you secured were secured through a custom that had lasted for many years?

Mr. Cochran. Yes, sir; I got passes away back in 1891 and 1901. It was a custom that all legislators got without asking and with asking. It was not so great a burden away back there as it is in latter days.

Mr. Waller. The legislature in 1913 was in session for a long time, was it not?

Mr. Cochran. I think it was about nine months.

Mr. Waller. One general session, and it lasted over several months, and then two extra sessions?

Mr. Cochran. Yes, sir.

Mr. Waller. And naturally the transportation for 1913 was larger than usual: that is, these requests were larger, on account of that long time, than they ever had been, perhaps, before?

Mr. Cochran. Considerably so. When the measure would come up in regard to any local affairs, even, the people wanted to come that were interested in it, and so far from my section of the country they could not afford to pay the railroad fare, as they thought, and just asked me, if I was on the ground: "Can you get me a pass?"

Mr. Waller. That is where your people were interested in some local legislation and wanted to come up here in its interest and confer with you about it?

Mr. Cochran. Yes, sir; in several cases.

Mr. Waller. And you would request the transportation and the railroads would give it?

Mr. Cochran. Always. I never was refused, I believe; that is, in 1913. I want to say that I did favor—now the railroad gave the ex-Confederate soldiers—I belonged to Company E, at Union City—the indigent ex-Confederate soldiers, they always gave anywhere from 10 to 15 passes to the indigent soldiers. Well, I favor that; I would have to say I still favor that part of it. I would be glad if everyone got it. I never received one as a soldier to go to our reunion, but I was glad to see the indigent soldiers that could not go otherwise receive them, and I would be glad to see that continued.

Mr. Waller. You mean to say the Nashville, Chattanooga & St. Louis Railway has been in the habit of doing that sort of thing?

Mr. COCHRAN. Yes, sir; and do yet. I understand they have agreed to send part of them in May, the 16th.

Mr. WALLER. I will ask you what you think has been accomplished through the farmers' institutes in your section of the country?

Mr. COCHRAN. Quite a good deal, sir. I belonged to the Wheelers back, you remember, about 25 years ago; and that thing went to pieces from the fact we could not get to and from on the railroad. But now the cooperative agricultural departments of the State are doing good work; they are doing fine work, both for the State and the railroads. They get their part in the increase in agriculture, and I think that has accomplished a great deal, and it is just now in its infancy. The farming and agricultural department of the State of Tennessee is progressing rapidly, and it is through these institutes.

Mr. WALLER. Do you think these institutes could have prospered and grown without this assistance from the railroads?

Mr. COCHRAN. My guess about it is, sir, there would not be any without the railroads; that is what I honestly think about it.

Mr. WALLER. You mean without the system of granting free transportation?

Mr. COCHRAN. Yes, sir; in that way, because they would not go; the common farmers haven't much money to spend that way, and they would not spare the time and money and hotel bills and all that, but to give them a pass, they will go.

Mr. WALLER. That free transportation has been furnished through the agricultural department of the State, one of the branches of the State government, has it not?

Mr. COCHRAN. Yes, sir; as I understand it.

Mr. WALLER. And it is done openly and publicly, and everybody knows about it?

Mr. COCHRAN. Yes, sir.

Chairman MEYER. Do you know whether in some States, where free passes have not been given, the farmers' institutes have been successful?

Mr. COCHRAN. That might be in the North, but in the South the people, you know, are inclined to be a little lazy and would not want to go.

Chairman MEYER. Coming from another State, I am willing to believe that what you suspect about the people in the South is not altogether true.

Mr. COCHRAN. Well, sir; I believe in the present condition of the State of Tennessee and the start it has got, it might stay as it is a while, but it would go down if you took away the free transportation. I believe that. I may be mistaken about it, but that is what I believe.

Mr. WALLER. There is one difference between the States down here and the Northern States in that, after the war, everything was torn to pieces?

Mr. COCHRAN. Yes.

Mr. WALLER. And it has taken them a good long while to get together again?

Mr. COCHRAN. Well, quite a while. We struggled a long, long time, right after the war; we had no time for anything, and did not have clothing, money, or anything else; stock or fences or anything else; and we are just now extricating ourselves from that horrible condition.

(Witness excused.)

G. R. McDade was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Folk. What is your full name?

Mr. McDade. G. R. McDade.

Mr. Folk. Where do you live?

Mr. McDade. I live at Troy, Tenn.; Obion County.

Mr. Folk. What is your occupation?

Mr. McDade. I am a merchant.

Mr. Folk. Have you ever been a member of the Legislature of Tennessee?

Mr. McDade. Since 1909, with the exception of two years, 1911 and——

Mr. Folk. You are still a member of the legislature?

Mr. McDade. Yes.

Mr. Folk. You were first elected in 1909?

Mr. McDade. That is the first term that I served; elected in 1908.

Mr. Folk. Did you receive an annual pass for the Louisville & Nashville Railroad after your election?

Mr. McDade. Yes, sir; I did.

Mr. Folk. And one from the Nashville, Chattanooga & St. Louis Railway?

Mr. McDade. I did.

Mr. Folk. What other railroads sent you annuals?

Mr. McDade. I received an annual pass from the Illinois Central after I was elected, but I had been riding on passes of the Illinois Central before I had ever become elected.

Mr. Folk. How did you get the pass of the Illinois Central before that?

Mr. McDade. By making requests for them.

Mr. Folk. Before you became a member of the legislature?

Mr. McDade. Yes.

Mr. Folk. What reason was there for issuing a pass to you before you were elected to the legislature?

Mr. McDade. Well, I don't know of any particular reason, except that some of the officials of the road were good friends of mine, and I had known them for quite a number of years.

Mr. Folk. You were a shipper on the road, were you?

Mr. McDade. No; I was not.

Mr. Folk. It was through personal friendship?

Mr. McDade. Through personal friendship.

Mr. Folk. Were you a member of the legislature when the antipass bill came up before the house?

Mr. McDade. I was.

Mr. Folk. Did you vote for or against it?

Mr. McDade. I voted for the antipass bill, as I recall.

Mr. Folk. Do you think the pass system is a bad thing for the people of the State?

Mr. McDade. When used for political purposes I do; yes.

Mr. **Folk**. And you favor the abolition of the present pass system, do you?

Mr. **McDade**. In so far as it will apply to politics, that would be my personal view in regard——

Mr. **Folk**. Well, you differentiate the kind of passes that you think should be abolished and the kind that you think should remain.

Mr. **McDade**. Well, I do not think the passes for the farming classes of people should be abolished.

Mr. **Folk**. How about legislators?

Mr. **McDade**. Well, from a personal standpoint, it would have been an accommodation to me if there had not been any issued to me, and at my request. Since I have been a member of the legislature I would rather have paid my own fare than be bothered with it. As a matter of fact, I didn't consider that the railroad company was doing me a favor by issuing the passes.

Mr. **Folk**. Would you favor the abolition of passes tt this time, so far as legislators are concerned?

Mr. **McDade**. I would. I have voted for the abolition of the pass system.

Mr. **Folk**. In other words, you think that the evils that flow from giving passes to legislators overcome any good that may come?

Mr. **McDade**. Well, I do not know that it could be placed exactly that strong; but, owing to the fact that there is so much agitation over the question, I would support a measure, as a member of the legislature, abolishing the pass system in the State of Tennessee.

Mr. **Folk**. Cutting off passes from everybody except farmers?

Mr. **McDade**. Yes, sir.

Mr. **Folk**. You would let farmers ride free?

Mr. **McDade**. That is, those attending farmers' institutes, and so on.

Mr. **Folk**. Why except those going to these agricultural fairs?

Mr. **McDade**. Well, I would exempt them on the ground that I think we need to develop the agricultural system in our State, and that we could develop it more rapidly by issuing these passes to these delegates to these various conventions.

Mr. **Folk**. Do you know that the agricultural interests of other States have been developed tremendously without the use of passes at all?

Mr. **McDade**. I am not informed along that line.

Mr. **Folk**. And that they have these industrial and farmers' associations in very much more thriving form without the passes than you have here with the passes?

Mr. **McDade**. As I say, I am not informed along that line, and do not know whether that is true or not.

Mr. **Folk**. That is all.

Cross-examination:

Mr. **Waller**. Mr. McDade, you speak of the evils. The evils which you speak of in the pass system is the annoyance which it gives you in answering the correspondence?

Mr. **McDade**. That is the principal one, so far as I am concerned.

Mr. **Waller**. Do you regard this custom of giving passes as influencing members of the legislature in the performance of their duties?

Mr. **McDade**. Only to a slight extent, only to a slight extent. As far as I am concerned myself, I do not think it has ever influenced me in the performance of my duty. I have always tried to be just to the railroads as well as to the people.

Mr. WALLER. As I recall, you passed an iniquitous bill against the Nashville, Chattanooga & St. Louis Railway at the last legislature.

Mr. McDADE. Well. I did not think so exactly at the time, while I will admit we had quite a little scrap over it.

Mr. FOLK. What bill was that?

Mr. McDADE. It was a local bill affecting the municipality of Union City.

Mr. FOLK. A station house——

Mr. WALLER. As a general rule, do you think members of the legislature are influenced by this transportation?

Mr. McDADE. Not as a general rule; no, sir; I do not. I know I have never been influenced by it.

Mr. WALLER. You say you received transportation frim the Illinois Central before you came to the legislature, and since?

Mr. McDADE. Yes.

Mr. WALLER. Have you had any controversies with the Illinois Central Railroad?

Mr. McDADE. Yes; I was in a scrap with them for about two years over a little matter of passenger service into the little town that I live in, Troy, Tenn. Troy, Tenn., is located at the end of a spur of the Illinois Central Railroad 4½ miles from the main line, and I took the matter up with the railroad commission of the State of Tennessee, and, after scrapping with them for something like two years, I made them put a passenger train on that little 4½-mile spur, and it is still there.

Mr. WALLER. You have had considerable experience in the legislature, several terms?

Mr. McDADE. I have served three terms.

Mr. WALLER. I want to ask you if you believe it would be possible for a railroad, or for railroad interests, to properly protect their interests as to legislation without some one being present at the capitol to secure bills and know what the order of business is and when they will come up and when they will be referred to committees, etc.?

Mr. McDADE. Well, I will answer that question in this way, by stating that I do not think that any interest of any very great moment could properly protect its interests in legislative matters without they had some one to look after those interests.

Mr. WALLER. Is there any reason you know of why a railroad company should not protect its interests in that respect, when everybody else does?

Mr. McDADE. No; there is not, so far as I know.

Mr. WALLER. Now, you remember, perhaps, some bills introduced in the legislature at the last session, such as the full-crew bill. Did you hear that bill discussed before committees?

Mr. McDADE. You mean in the 1915 session?

Mr. WALLER. Yes; in 1915 and 1913, both.

Mr. McDADE. I do not remember to have heard the bill discussed.

Mr. WALLER. Do you know whether or not labor organizations had representatives here employed to stay here during the session of the legislature to push legislation of that character?

Mr. McDade. I understood as much; yes; I understood that they did.

Mr. Waller. Well, did you not see such representatives around the capitol?

Mr. McDade. Oh, yes; I saw such representatives.

Mr. Waller. Did not the street railway interests of the State have representatives here during the legislative sessions?

Mr. McDade. Yes; I saw gentlemen here that I was told were representatives of the street railway interests of the State, both of Memphis and Nashville.

Mr. Waller. So the attitude of the railroads in that respect is not different from that of other property interests, so far as you know?

Mr. McDade. So far as I know they are not different; no.

Mr. Waller. That is all.

Redirect examination:

Mr. Folk. Were you on the railroad committee?

Mr. McDade. Yes, sir; I was.

Mr. Folk. Are the railroad committees usually made up of those legislators favorable to the railroads?

Mr. McDade. No; I can not say that that is true; not that I know of. If that is true, it never came to my knowledge.

Mr. Folk. You spoke of a bill that was passed which the railroads opposed, having something to do with Union City. Can you mention any other bill passed by the legislature that was opposed by the railroads?

Mr. McDade. Well, I do not recall, just at this particular time, any other bill.

Mr. Folk. You can recall several bills that the railroads opposed that were defeated, can you not?

Mr. McDade. Well, I believe I can recall possibly two or three or three or four.

Mr. Folk. The free-pass bill, fellow-servant bill——

Mr. McDade. Yes; and the Broad Street bill. This bill of mine that I passed, however, was an infant Broad Street bill, you might say, only it applied in a small way where the other was in a big way.

Mr. Folk. So that all the years you have been a member of this general assembly, so far as you know, practically all of the members have received passes from the railroads of the State?

Mr. McDade. Well, I could not make the assertion as broad as that. I know of a great many of them who have received passes from the railroad company.

Mr. Folk. And you think it has been a custom for many years?

Mr. McDade. Yes, sir; it has been.

Mr. Folk. For legislators to receive passes from railroads?

Mr. McDade. Yes, sir; it has been, to my information.

Mr. Folk. During all these years you have been a member of that body you know of only one bill enacted over the opposition of the railroads, and that was a local measure applying to Union City?

Mr. McDade. Well, as a matter of fact, Gov. Folk, the last session of the legislature there were more than a thousand bills introduced, and in the 1913 session I think there were something like 1,400 or 1,500 bills introduced, and not having any personal interest, possibly, in maybe more than 100 or such a matter of those bills, I did not try to impress it on my mind, as a rule, whether they affected the railroad companies or not. I did not try to remember as to whether they affected the railroad companies or not.

Mr. **Folk**. You have had up electric-headlight bills at each session, have you not?

Mr. **McDade**. Now, in the 1913 session I think possibly the electric-headlight bill was up; but I will state, by way of explanation, that during that session, the main part of the session, I was away for something like a month and a half and was not present at the session.

(Witness excused.)

F. E. **Bryant** was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk**. Your name is F. E. Bryant?

Mr. **Bryant**. Yes, sir.

Mr. **Folk**. Where do you live?

Mr. **Bryant**. I live at the present time in Paris, Ky., Henry County. I formerly lived at Trenton, in Gibson County.

Mr. **Folk**. Were you a member of the legislature from Gibson County?

Mr. **Bryant**. Yes, sir; in 1913 I was.

Mr. **Folk**. You are not a member of the legislature at this time?

Mr. **Bryant**. No, sir.

Mr. **Folk**. How long were you a member of the legislature?

Mr. **Bryant**. Just one term; two years.

Mr. **Folk**. 1912 and 1913?

Mr. **Bryant**. 1913 and 1914.

Mr. **Folk**. After your election as a member of the legislature, did you receive annual passes from the Louisville & Nashville Railroad; Nashville, Chattanooga & St. Louis Railway; and other railroads of the State?

Mr. **Bryant**. Yes, sir; I received card passes from those two roads, the Southern and the Tennessee Central and the Mobile & Ohio.

Mr. **Folk**. During the year 1913 did you request a large number of trip passes from the Nashville, Chattanooga & St. Louis Railway?

Mr. **Bryant**. Well, I requested a great many. I do not have any idea how many it was.

Mr. **Folk**. Several hundred?

Mr. **Bryant**. It may have gone up several hundred; yes.

Mr. **Folk**. Your people were very clamorous for passes, were they not?

Mr. **Bryant**. Yes, sir; very much so.

Mr. **Folk**. Now, the pass bill came up before the house while you were a member?

Mr. **Bryant**. Yes, sir.

Mr. **Folk**. And you voted in favor of it?

Mr. **Bryant**. I voted for the antipass bill; yes, sir.

Mr. **Folk**. In other words, you think the pass system is a bad thing for the people of the State?

Mr. **Bryant**. Well, it strikes me that way; yes, sir.

Mr. **Folk**. And ought to be abolished?

Mr. **Bryant.** I think it ought to be abolished.

Mr. **Folk.** Why, Mr. Bryant?

Mr. **Bryant.** Well, for very much the same reasons as Brother Cochran stated. It just strikes me that it is a system that gives the people—they are suspicious enough, I think, of public officers, and it gives those that oppose the system room for criticizing them and saying they are being influenced, whether they are or not; and it gives those that are not opposed to it too small an idea of the duties of a public citizen, I think. I say that for the reason that a great many of my constituents did not seem to think I was sent up here for any purpose except to get passes for them, and it annoyed me a great deal.

Mr. **Folk.** There are quite a number of members of the legislature who find themselves in the same fix, do they not?

Mr. **Bryant.** Yes, sir; I think so. That was the way with me.

Mr. **Folk.** You get more letters about passes than you do upon the subject of legislation, do you not?

Mr. **Bryant.** I guess the letters I received about passes would be more than all the others I got.

Mr. **Folk.** That is all.

Cross-examination:

Mr. **Waller.** You represent the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, do you not, now, as local attorney?

Mr. **Bryant.** The firm I am a member of is local counsel in Henry County.

Mr. **Waller.** You were not, however, connected with these roads at the time you were in the legislature?

Mr. **Bryant.** No, sir.

(Witness excused.)

James Brett was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk.** What is your name?

Mr. **Brett.** James Brett.

Mr. **Folk.** Where do you live?

Mr. **Brett.** Memphis.

Mr. **Folk.** What is your occupation?

Mr. **Brett.** Clerk of the circuit court of Shelby County.

Mr. **Folk.** Have you ever been a member of the General Assembly of the State of Tennessee; and if so, when?

Mr. **Brett.** I was a member of the State senate in 1913.

Mr. **Folk.** Elected when?

Mr. **Brett.** I was elected in the fall of 1912; November, 1912.

Mr. **Folk.** After you were elected a member of the assembly did you receive an annual pass from any of the railroads of the State?

Mr. **Brett.** No; I did not receive an annual pass. I received a card pass, good for three months; I think it expired the 31st of March.

Mr. **Folk.** It expired the 1st of March?

Mr. **Brett.** The 31st of March.

Mr. **Folk.** Did you not receive any more after that?

Mr. **Brett**. I don't know. The legislature was in session about nine months. It had two extra sessions after that. They may have extended that pass a short time, but I did not have an annual pass.

Mr. **Folk**. The pass was from the Louisville & Nashville Railroad, or the Nashville, Chattanooga & St. Louis Railway?

Mr. **Brett**. The Louisville & Nashville and the N., C. & St. L.

Mr. **Folk**. How about the Southern?

Mr. **Brett**. I had only one pass from the Tennessee Central, and I used that once to go to Knoxville, that I know of.

Mr. **Folk**. Did you request a large number of passes for other people during 1913?

Mr. **Brett**. I don't know how many. I know I got a good many requests, letters written me from people in Memphis, and I always requested the passes, whether I got them or not.

Mr. **Folk**. Several hundred trip passes were issued to you or on your request during 1913?

Mr. **Brett**. I don't know how many; whatever the records show I suppose I asked for.

Mr. **Folk**. Do you recall the antipass bill?

Mr. **Brett**. Yes, sir.

Mr. **Folk**. Were you in favor of it or opposed to it?

Mr. **Brett**. I was in favor of it. It was killed in the house and never did come up in the senate.

Mr. **Folk**. You think the pass system is not a good one for the people of the State?

Mr. **Brett**. No; I do not.

Mr. **Folk**. You think it ought to be abolished?

Mr. **Brett**. Yes.

Mr. **Folk**. You think there ought to be a law enacted by the legislature abolishing that system?

Mr. **Brett**. Yes.

Mr. **Folk**. You know it has been enacted in most of the States?

Mr. **Brett**. Yes, sir; I do.

Cross-examination:

Mr. **Keeble**. Mr. Brett, you were a senator from Shelby County, I believe you stated?

Mr. **Brett**. Yes, sir.

Mr. **Keeble**. I will ask you if it is not a fact that during the year 1913 a majority of the delegation from Shelby County, to your knowledge, had passes on these two railroads and came to the legislature?

Mr. **Brett**. The majority of them did; yes, sir. There were some that did not. I could name those that did not have, if you want their names.

Mr. **Keeble**. Just as you please about that.

Mr. **Brett**. But the majority of them accepted passes; yes, sir.

Mr. **Keeble**. It is also a fact that a majority of the delegations from Shelby County during that session requested a good many trip passes for their constituents?

Mr. **Brett**. I think so; yes, sir.

Mr. **Keeble**. It is a fact that the majority of the delegation, including those who had passes, were pledged and did advocate the passage of the fellow-servant law; that is true, is it not?

Mr. **Brett.** Yes.

Mr. **Keeble.** And that measure was opposed by the manufacturers and to a certain extent by the railroads, too, was it not?

Mr. **Brett.** Yes, sir; it was.

Mr. **Keeble.** As a matter of fact, since the passage of the interstate-commerce law making interstate carriers liable to their employees, regardless of the defense of contributory negligence and regardless of the assumption and risk and the doctrine of fellow servants, you understand that practically all railroad employees are practically protected by that law now, do you not?

Mr. **Brett.** Yes.

Mr. **Keeble.** Well, it is a very small interest, so far as the railroads are concerned and their force in the fellow-servant law is concerned.

Mr. **Brett.** Yes.

Mr. **Keeble.** But they had, at that session, to a certain extent opposed it?

Mr. **Brett.** Yes.

Mr. **Keeble.** And the manufacturers had opposed it?

Mr. **Brett.** Yes.

Mr. **Keeble.** And other employers of labor had opposed it?

Mr. **Brett.** Yes.

Mr. **Keeble.** Street car companies had opposed it?

Mr. **Brett.** Yes.

Mr. **Keeble.** This was not a law directed against the Louisville & Nashville Railroad alone?

Mr. **Brett.** No.

Mr. **Keeble.** It was not a law directed against the Nashville, Chattanooga & St. Louis Railway Co. alone?

Mr. **Brett.** No.

Mr. **Keeble.** It was not a law directed against the steam railroads alone, was it?

Mr. **Brett.** No; I do not think it was intended for the railroads.

Mr. **Keeble.** It covered all employers of labor except farmers and domestic servants?

Mr. **Brett.** Yes.

Mr. **Keeble.** And there was not any particular advocacy of the measure to make that law apply to all the people except those that employed labor generally in business?

Mr. **Brett.** Yes.

Mr. **Keeble.** Your delegation, as a delegation, was solid for that law?

Mr. **Brett.** Yes, sir. We were elected on that platform and also the antipass platform.

Mr. **Keeble.** And you supported the antipass measure?

Mr. **Brett.** So far as I could; but it never came to vote in the senate, because it was killed in the house.

Mr. **Keeble.** Is it not a fact you know that in the house some of the members from Shelby County who had passes in their pockets and had received them for their constituents made speeches in which they made vicious attacks on the railroads for the issuance of passes?

Mr. **Brett.** I know some of them voted for the bill that had passes in their pockets and who requested passes.

Mr. **Keeble.** You do not remember whether any of them made speeches or not?

Mr. BRETT. I was not over there and could not say of my own knowledge.

Mr. KEEBLE. The Shelby County delegation was a very aggressive delegation and had been during the entire session, had it not?

Mr. BRETT. Well, we tried to be; yes, sir.

Mr. KEEBLE. And you took care of the interests of your people as you saw it?

Mr. BRETT. Yes, sir; we tried to, to the best of our ability.

Mr. KEEBLE. And those men who rode on the railroad passes and got those constituents' passes for their friends did not hesitate to fight the railroads if the railroads opposed the antipass law, which I do not know; they tried to pass the fellow-servant bill, and they undertook to pass the full-crew bill?

Mr. BRETT. Yes, sir; and the headlight bill.

Mr. KEEBLE. In fact, your delegation had committed itself to organized labor before it was ever nominated in Shelby County?

Mr. BRETT. Yes, sir.

Mr. KEEBLE. And you came up here pledged to support their measures, regardless of every other thing?

Mr. BRETT. Yes; and I think we came mighty near doing it. We did our best.

Mr. KEEBLE. So far as you know, did that in any way affect the attitude of the issuance of passes to your delegation?

Mr. BRETT. Not that I know of.

Mr. KEEBLE. As a matter of fact, that has been the custom and usual custom with railroads in this State for some time, has it not?

Mr. BRETT. Yes; I have come to Nashville a good many times on a pass myself while the legislature was in session.

Mr. KEEBLE. Before that time?

Mr. BRETT. Yes.

Mr. KEEBLE. It has not been confined to the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad?

Mr. BRETT. No; I do not think so. I could not say as to the other railroads, because I do not believe I ever rode on a pass on any other road except the Southern.

Mr. KEEBLE. Well, that was the general impression in the legislature, that they got them?

Mr. BRETT. Yes.

Mr. KEEBLE. In fact, the citizens who came from east Tennessee had no way to get here except over the N., C. & St. L. and the L. & N.?

Mr. BRETT. And the Tennessee Central.

Mr. KEEBLE. And the Southern?

Mr. BRETT. And the Southern.

Mr. KEEBLE. Did you have any passes on the street cars while you were at Nashville?

Mr. BRETT. I did; yes, sir.

Mr. KEEBLE. Is it your information that the majority of the members of the legislature had books of tickets issued by the Nashville street railway?

Mr. BRETT. I saw a good many. I could not say they all had them.

Mr. KEEBLE. But there were quite a number of them?

Mr. BRETT. Yes.

Mr. KEEBLE. They were given out pretty generally?

Mr. BRETT. Yes.

Mr. **Keeble**. And that was a custom which had prevailed, according to your understanding, for a considerable length of time?

Mr. **Brett**. All I can say about that is that the members of the former legislatures, and some were members of the 1913 legislature, told us that the street car company would send us around the book, and we got the book. I have forgotten where it came from, but we had the pass.

Mr. **Keeble**. And this custom of passes for representatives and their constituents, which were indiscriminately issued to members from time to time, to the best of your information, had been a growth and development?

Mr. **Brett**. Yes; that is my understanding of the situation.

Mr. **Keeble**. There is one thing—for instance, one of the controversies which existed between the Shelby County delegation and the railroads of the State, including all of them, had been bills in regard to the abolition of grade crossings, had they not?

Mr. **Brett**. Yes, sir.

Mr. **Keeble**. And your delegation down there advocated and pressed those bills earnestly?

Mr. **Brett**. And passed them.

Mr. **Keeble**. And passed them?

Mr. **Brett**. Yes, sir; that is, as far as gravel roads are concerned, to eliminate all grade crossings on gravel roads.

Mr. **Keeble**. That is all.

Redirect examination:

Mr. **Folk**. You spoke of some members of the Shelby County delegation who did not have passes?

Mr. **Brett**. Yes, sir.

Mr. **Folk**. Give their names.

Mr. **Brett**. Senator Hubert Fisher, L. D. B. Jack, C. L. Neely—I do not know whether—I do not think Mr. Stanton ever had a pass. He was speaker of the house.

Mr. **Keeble**. You are not positive about Mr. Stanton, are you?

Mr. **Brett**. No; but that was my understanding; he did not ride on a pass.

Mr. **Folk**. These other gentlemen refused to accept passes, did they?

Mr. **Brett**. Yes, sir; they refused to accept passes.

Mr. **Keeble**. Do you know whether they were ever offered to them or not?

Mr. **Brett**. Well, I do not know. My recollection is that a pass was offered to Mr. Fisher. He was my colleague in the senate and told me he turned it down—that he would not ride on a pass.

Mr. **Folk**. You were asked whether or not your delegation pledged themselves to organized labor before their nomination.

Mr. **Brett**. Well, that was, of course, at the county conventions; they adopt a platform before they nominate the candidates. That is, of course, what I thought he was driving at.

Mr. **Folk**. You mean the pledge, if any, was made by the platform?

Mr. **Brett**. Yes.

Mr. **Folk**. You do not mean you made personal pledges?

Mr. **Brett**. Oh, no.

Mr. FOLK. The majority of the legislature held passes, did they not?

Mr. BRETT. Well, that was true in our delegation, and I saw a good many others going down and coming back on the train.

Mr. FOLK. Did organized labor get any legislation from that legislature that was opposed by the railroads?

Mr. BRETT. I do not know of any; no, sir.

Mr. FOLK. Can you recall any measure that the Louisville & Nashville interests favored which was defeated, or any measure that the Louisville & Nashville Railroad opposed, which was passed by the legislature in which you served?

Mr. BRETT. Well, we had the full-crew bill up and the headlight bill up, and I believe both of those bills came to an issue in the senate and were defeated.

Mr. FOLK. They were both opposed by the railroad companies?

Mr. BRETT. Yes, sir; and also the Broad Street bill in Chattanooga. That came up, and I voted for it, and that was defeated. That was opposed by the railroad company.

Mr. FOLK. Now, Mr. Brett, you say you favor the abolition of passes?

Mr. BRETT. Yes, sir.

Mr. FOLK. Do you believe that the legislators can represent the interests of their constituents without the use of passes better than they can with passes?

Mr. BRETT. Yes, sir; I do.

Mr. FOLK. Do you know whether or not the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have participated actively in the politics of this State in the past few years?

Mr. BRETT. It has been generally understood that they did. I only have it in a general way from common talk; you might say, common knowledge; what everybody talks it all over the State, as far as I have been, that they have taken a big hand in politics.

Mr. FOLK. You say you would consider it common knowledge?

Mr. BRETT. Well, yes; down in our part of the country. I have heard that all over our county.

Mr. FOLK. Do these railroad interests oppose the election of candidates for office whom they desire to defeat?

Mr. BRETT. Well, now, of course, I have heard that, but to my own knowledge I do not know that. The politics that I have heard of—of the two railroads being charged with—were when the legislature was in session to oppose bills which they did not want passed. That is the way I understood they were in politics.

So far as opposing anyone who was running for any State office, of course I have heard of this man or that man, but I have no knowledge at all.

Recross examination:

Mr. WALLER. Mr. Brett, is it not a fact that in State campaigns in the last few years, where the people have been very much divided, that representatives or agents or officers of railroads of this State have been divided just about like other people have been divided, and that here you will find a railroad man for one person and here you will find one for another?

Mr. BRETT. I can not speak all over the State. I can only speak of my knowledge of the situation in Memphis. That is the way it is there. I have a great many railroad friends there, and they are split up and divided as to candidates and no concerted action among them there.

Mr. WALLER. This political activity you speak of is when they protect their interests in legislative matters?

Mr. BRETT. To the best of my information that is what they call political activity.

Mr. WALLER. Do you think that a railroad interest has no right to go before committees and secure information about legislation and go before committees as to legislation, as to things which it thinks affects its interests deleteriously, the same as other people?

Mr. BRETT. I was always in favor of allowing the railroad people to come before any committee and have their day in court, but I was opposed to having the railroad people come on the floor of the house and the senate and buttonholing members, and did not think that was right.

Mr. WALLER. Perhaps that was not right; but other people did the same thing?

Mr. BRETT. Yes; the school lobbyists and various interests.

Mr. WALLER. And labor union men did it?

Mr. BRETT. Yes, sir; that is true.

Mr. WALLER. The railroad representatives, then, were not different from others?

Mr. BRETT. Except they were on the job every day and every hour of the day, and these other people were there occasionally.

Mr. WALLER. They had to be on the job to watch all those bills, did they not?

Mr. BRETT. The work is usually done in the committee, I have found. Where you recommend a bill for passage in the committee, if it was unanimous, you did not have much trouble in passing it when it came up before the senate; or, if the bill was recommended for rejection, it was generally rejected. There was hardly any fight in the senate.

Mr. WALLER. But still you had to get copies of the bills and appear before committees, and all that sort of thing?

Mr. BRETT. Yes.

Mr. WALLER. And you just think they were more on the job, perhaps, than others?

Mr. BRETT. I would say this, that you could not have two nicer gentlemen up there than Mr. McConnell and Dorsey Hudson. They were personally my friends and knew I was against them on all these propositions.

Mr. WALLER. And still you were friendly with them?

Mr. BRETT. Yes, sir; but still I never approved of their being on the floor of the senate and house, buttonholing members.

Mr. WALLER. Well, the senate had the right to exclude them, did it not?

Mr. BRETT. Yes; and we did exclude them time and again.

Mr. WALLER. And excluded others at the same time?

Mr. BRETT. Yes.

Mr. WALLER. You would clear the floors and exclude everybody except the senators?

Mr. BRETT. Yes.

Mr. FOLK. You say you did exclude Mr. McConnell and Mr. Hudson from the floor of the senate several times?

Mr. BRETT. Yes, sir.

Mr. FOLK. Why did you do that? Because they were perniciously active?

Mr. BRETT. Well, they were around there a good deal, and some of the members—I have forgotten who it was—got pretty sore over it, and they got the attention of the speaker and asked that they be put off of the floor, and, of course, they retired; there was no putting them off the floor. When some senator made the motion, they, like gentlemen, walked out, of course.

Mr. FOLK. Did you know whom they represented?

Mr. BRETT. Well, that was a matter of common knowledge, that they represented the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

Mr. WALLER. Well, did they represent the L. & N.? They represented the N., C. & St. L., did they not?

Mr. BRETT. Well, of course, when I say it was common knowledge, I do not know who they represented. I had never seen either one of them around the L. & N. office; no, sir. I have seen them around the N., C. & St. L. office.

Mr. FOLK. You spoke of railroad representatives being sometimes divided; sometimes some representative being for one candidate, and some representatives being for other candidates. Did you ever know of Mr. Hudson and Mr. McConnell being for different candidates?

Mr. BRETT. Well, I never heard them mention anything about anybody's candidacy for office.

Mr. FOLK. It was always with reference to bills, was it?

Mr. BRETT. It was always with reference to bills; yes, sir.

Mr. FOLK. Did they come on the floor of the house as well as on the floor of the senate?

Mr. BRETT. Yes.

Mr. FOLK. And buttonhole members right in their seats?

Mr. BRETT. Yes; I have seen that.

Mr. FOLK. Is there a rule against anyone but members and ex-members being on the floor?

Mr. BRETT. Yes; they passed that rule, I think, in 1913; but then you know how those rules are. They are passed by the house and they get busy and they forget all about them, and anybody who wants to go in there goes in and talks to the members.

Mr. WALLER. And others did it besides these two?

Mr. BRETT. Oh, yes; anybody and everybody who wanted to talk with a member would go in.

Mr. FOLK. The only difference was these gentlemen were there all the time?

Mr. BRETT. Yes, sir.

Mr. FOLK. While the others came occasionally?

Mr. BRETT. Yes, sir: that is true.

Mr. WALLER. Was Mayor Crump up there often?

Mr. BRETT. Yes; a good deal.

Mr. WALLER. Was he in the senate, too?

Mr. **Brett.** Yes, sir; in the senate and house.

Mr. **Waller.** And was he not pretty well on the job, too?

Mr. **Brett.** Yes, sir; he was pretty well on the job all the time?

Mr. **Waller.** Mr. Crump was the mayor of Memphis?

Mr. **Brett.** Yes; at that time he was.

Mr. **Waller.** And he was trying to pass a great many of these bills affecting railroads, was he not?

Mr. **Brett.** Well, we had a great many local bills we were interested in, and I have forgotten now how many; but we finally passed 80 or 90, somewhere along there, bills that affected Memphis and Shelby County that we were very much interested in. We promised the people to give them to them, and by hard work we finally got them passed.

Mr. **Keeble.** A good deal has been said about political activity, by Gov. Folk. I will ask you if this is not true: That since the year 1908 the great political interests of this State have practically centered around the question of the abolition of whisky and the passing of law-enforcing measures?

Mr. **Brett.** Yes, sir; it looked like the people of the State had forgotten everything else except that one thing.

Mr. **Keeble.** And, as a matter of fact, there has not been a session of the legislature since that time that those issues have not consumed practically the entire attention of the legislature?

Mr. **Brett.** That is a fact; yes, sir.

Mr. **Keeble.** And when, at one time, it looked like at a session that certain bills were going to pass that one faction of the legislature did not want to pass, they would break the quorum and leave the State and stay out for weeks?

Mr. **Brett.** Yes; that is true.

Mr. **Keeble.** And at another time, when it looked like bills of this kind were going to be passed, the other faction would leave the State and stay out a while?

Mr. **Brett.** Yes, sir; I believe that did occur on both sides.

Mr. **Keeble.** And as the result of that the whole legislative session for many years, and every political campaign we have had in this State, has been conducted on these issues?

Mr. **Brett.** Yes, sir.

Mr. **Keeble.** Practically ignoring everything else?

Mr. **Brett.** Yes, sir; and in 1913 I think some left the State.

Mr. **Keeble.** As a matter of fact, the whole point I am making is that there have not been any other issues that have interested the people in all these years of any consequence?

Mr. **Brett.** Of course, there have been other matters that interested them, but that was the main question that was in the public mind.

Mr. **Keeble.** It controlled political alliances, did it not?

Mr. **Brett.** Well, it looked very much like it.

Mr. **Keeble.** In other words, it split the Democratic Party?

Mr. **Brett.** Yes.

Mr. **Keeble.** It made what was called the fusion party, did it not?

Mr. **Brett.** Yes, sir.

Mr. **Keeble.** And it elected a governor outside of the Democratic Party?

Mr. BRETT. Two terms.

Mr. KEEBLE. And the fusion forces elected a senator over the Democratic organization?

Mr. BRETT. Yes, sir.

Mr. KEEBLE. That is true, is it not?

Mr. BRETT. Yes.

Mr. KEEBLE. And that issue was carried on even in this last senatorial fight, to a certain extent—the personalities that grew out of that fight, the issue of law enforcement?

Mr. BRETT. I do not know about that. I do not know what was injected into that. I did not hear any of the candidates speak, except McKellar.

Mr. KEEBLE. During 1913 there was a rearrangement of political adjustments growing out of the fight?

Mr. BRETT. Yes.

Mr. KEEBLE. Growing out of this, the combination between McKellar and Senator Lea and Maj. Stahlman and Mr. Crump was broken up over these issues in the legislature?

Mr. BRETT. Yes.

Mr. KEEBLE. And that has been the strong question in politics all these years?

Mr. BRETT. Yes.

Mr. KEEBLE. And has absorbed the attention of the public mind?

Mr. BRETT. Yes.

Mr. KEEBLE. Even to the extent, I will ask you, if it is not a fact, when you had some of these important bills that represented Shelby County and which had passed one body of the legislature, the senate, when the fusion people went out, did not the Shelby County delegation that had been cooperating with the straight Democratic Party make an arrangement with the fusionists that if they would come back they would stand by them in order to pass these bills? Is not that common knowledge?

Mr. BRETT. Yes; I think so. I know they came back. I know there were a great many bills that passed the senate, and of course when they left the State, we could not pass them in the house, and we had to get them back to pass them.

Mr. KEEBLE. The point I am making is that in so far as these railroad matters you have mentioned and discussed, they have been like a great many other public questions, practically lost in the maelstrom of political excitement over these issues?

Mr. BRETT. Yes; that is true. The members of the legislature seemed bound to the passage of these bills of law enforcement and ouster bills, which finally got the legislature torn up so that I do not think they really thought about anything else. They had caucus after caucus on all those measures, and that was the topic of conversation with all the members, with reference to those particular bills.

Mr. KEEBLE. After these law-enforcement bills were passed and the political destinies that had been shaken and destroyed, then we began for the first time the agitation of this antipass question to any great extent?

Mr. BRETT. Well, of course, as I say, that bill was killed in the house. It was argued in the committee on a good many occasions.

Mr. Keeble. I am asking you if it is not a fact that that agitation really commenced in 1913, after all these things broke up in the senate.

Mr. Brett. Well, it commenced in 1913, and I believe our delegation introduced the first antipass bill.

Mr. Keeble. I am saying, when all these things happened; that is, when all the agitation on this question was brought to your attention for the first time?

Mr. Brett. Yes, sir.

Mr. Keeble. Now, during all these struggles and controversies that plunged the State into controversy about these law-enforcement bills and these prohibition bills, which resulted in sharp personal antagonisms and conflict and dividing parties and organizations, I want to ask you again if you do not know it is a fact that the representatives of railroads throughout the State were allied on both sides and all the sides of these factions according to their political and social relations?

Mr. Brett. Judge, I could not say that, because I do not go abroad in the State, and my acquaintance State-large is very small, and my answer to that was the best I could know——

Mr. Keeble. Well, in Memphis they were divided?

Mr. Brett. That in my home town they were divided; yes, sir.

Mr. Keeble. So far as you know, that was true practically in every section of the State?

Mr. Brett. I have no right to doubt it. I have no knowledge.

Mr. Keeble. You did not know any railroad representatives in different sections—for instance, back when the Carmack-Patterson fight was on, you did not know railroad representatives that were for one side or the other?

Mr. Brett. No, sir.

Mr. Keeble. So far as your knowledge went, there was no line-up there?

Mr. Brett. No.

Mr. Keeble. And you do know that in all this period of time the whole attention of the people and the legislative body centered in these great controversies?

Mr. Brett. Well, as I stated before, that seemed to be—that everybody was crazy over all those bills; they had lost sight of everything else.

Mr. Keeble. Exactly so. Stand aside.

Mr. Folk. In the last campaign was prohibition the issue?

Mr. Brett. No; I think all three of the candidates agreed on that, that they were in favor of nation-wide prohibition.

Mr. Folk. Did not the question of domination of politics by railroads cut some figure in that campaign?

Mr. Brett. Yes; I think Senator Lea was on that platform. I did not hear him speak, but I read of it in the papers.

Mr. Folk. You spoke about these legislators going out of the State?

Mr. Brett. Yes, sir.

Mr. Folk. Do you know whether they went out of the State on passes?

Mr. Brett. No, sir; I do not. I did not leave myself. I stayed here.

Mr. FOLK. Where did they go; do you know?

Mr. BRETT. Well, I talked to Mr. Duncan, of Bradley County, and he told me, I think, that he went to St. Louis; and they were scattered all around. I could not tell where, and never tried to keep up with them or find where they were.

Mr. FOLK. So you do not know whether they used passes or not?

Mr. BRETT. No; I do not.

Mr. KEEBLE. You have been asked if the last senatorial fight had a railroad issue. I believe you said that Senator Lea was running on an antirailroad platform.

Mr. BRETT. I said, from what I read in the papers. I did not hear him speak.

Mr. KEEBLE. I mean that was your impression. I never heard him speak, either.

Mr. BRETT. Yes.

Mr. KEEBLE. And you saw his paper, the Tennesseean?

Mr. BRETT. Well, not often; no.

Mr. KEEBLE. Did you ever see anything in it on that subject?

Mr. BRETT. Yes.

Mr. KEEBLE. You do not mean to undertake to say, for instance, that Mr. McKellar, for example, was a candidate representing the railroad interests, do you?

Mr. BRETT. No.

Mr. KEEBLE. You do not mean to say that Mr. Patterson was representing the railroad issue, do you?

Mr. BRETT. No.

Mr. KEEBLE. Certainly the man who was elected did not represent the railroad people, did he?

Mr. BRETT. Well, not to my knowledge, he did not.

Mr. KEEBLE. So that whatever railroad issue was presented to the people at that time was presented entirely by Senator Lea?

Mr. BRETT. So far as I know. I did not keep up with the speeches.

Mr. KEEBLE. He was not elected, was he?

Mr. BRETT. No, sir; not nominated.

Mr. KEEBLE. You do not think that the railroad issue defeated him, or one way or the other, do you?

Mr. BRETT. Well, I don't know. I could not say, because, I told you, I did not know what stock the railroad company took in the fight.

(Witness excused.)

E. O. ROBERTS was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your full name?

Mr. ROBERTS. E. O. Roberts.

Mr. FOLK. Where do you live?

Mr. ROBERTS. Lexington, Henderson County, Tenn.

Mr. FOLK. What is your occupation?

Mr. ROBERTS. My occupation now is United States commissioner and deputy county court clerk.

Mr. FOLK. Have you ever been a member of the Legislature of Tennessee?

Mr. ROBERTS. Yes, sir.

Mr. **Folk.** When?

Mr. **Roberts.** 1913 and 1914.

Mr. **Folk.** Did you receive an annual pass from the Louisville & Nashville Railroad after your election?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** Did you use it?

Mr. **Roberts.** The Louisville & Nashville? No, sir.

Mr. **Folk.** Did you receive an annual pass from the Nashville, Chattanooga & St. Louis Railway?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** Did you receive an annual pass from any other railroad?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** What?

Mr. **Roberts.** The I. C., the M. & O., and the Tennessee Central.

Mr. **Folk.** Did you use them?

Mr. **Roberts.** No, sir.

Mr. **Folk.** What did you do with them?

Mr. **Roberts.** Well, I don't know as I have not got some of them in my pocket—old ones—if you want them.

Mr. **Folk.** 1913 passes?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** What are you carrying them around with you for?

Mr. **Roberts.** Just carelessness, to take them out of the case.

Mr. **Folk.** Just to look at?

Mr. **Roberts.** I don't know that they are there. I have not seen them, as I say, but I believe I have got them.

Mr. **Folk.** Did you request during the year 1913 a large number of trip passes?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** Several hundred?

Mr. **Roberts.** I do not know how many.

Mr. **Folk.** Your people were rather pass hungry in those days, were they not?

Mr. **Roberts.** They appeared to be.

Mr. **Folk.** It took a great deal of your time to supply their demand for passes?

Mr. **Roberts.** It did.

Mr. **Folk.** Do you recall the antipass bill?

Mr. **Roberts.** Yes, sir.

Mr. **Folk.** Did you favor it or oppose it?

Mr. **Roberts.** Well, I about halfway opposed it and about halfway favored it, but voted for it.

Mr. **Folk.** You thought, then, that it would be best to abolish the pass system?

Mr. **Roberts.** I thought it was probably the best under the circumstances. There were some parts of it I did not like and some parts of it I did.

Mr. **Folk.** Do you think now that the pass system, giving passes to legislators and judges and public officials, is good or bad, from the standpoint of the public interest?

Mr. **Roberts.** Well, sir, I don't know about that.

Mr. **Folk.** Why don't you know?

Mr. ROBERTS. Well, simply because I do not know anybody but myself.

Mr. FOLK. You think it is human nature to be grateful for favors received?

Mr. ROBERTS. Certainly so; but gratitude goes in different directions.

Mr. FOLK. Sir? Do you not consider a railroad pass a favor?

Mr. ROBERTS. Well, it was a favor to me, I thought, because I was a very poor man and I could go home occasionally and see my folks.

Mr. FOLK. You felt some spark of gratitude, did you not?

Mr. ROBERTS. Yes, sir; and I feel grateful to any man who does me a kindness.

Mr. FOLK. Do you not think it would be better if passes were abolished in this State entirely, as they are in most other States?

Mr. ROBERTS. Would it amount to anything, just what I think about it?

Mr. FOLK. I am asking about your opinion. You were a member of the legislature and ought to know of the effects of the system.

Mr. ROBERTS. I am of the opinion that for public officials it would be best to abolish it.

Mr. FOLK. The tendency is for them to have an influence over public officials that they ought not to have?

Mr. ROBERTS. I could not say that; I do not know.

Mr. FOLK. That is all.

Cross-examination:

Mr. WALLER. Mr. Roberts, these persons who secured this transportation while you were in the legislature wrote to you under the idea that there had been a custom to that effect?

Mr. ROBERTS. Certainly so; I presume that they thought that.

Mr. WALLER. Then you made the requests of the railroad company?

Mr. ROBERTS. Yes.

Mr. WALLER. It was done openly?

Mr. ROBERTS. Yes, sir.

Mr. WALLER. Everybody knew about it

Mr. ROBERTS. Well, I don't know about everybody, but quite a number of people did.

Mr. WALLER. At least, there was no effort to conceal a thing o' that sort?

Mr. ROBERTS. No, sir; not that I know of.

Mr. WALLER. When you got your letters how would you do—how would you make the request of the railroad companies?

Mr. ROBERTS. I would sometimes make a list and make a request in person, or send it down by a porter, or in different ways.

Mr. WALLER. Those persons who would make a request wanted to make a visit to Nashville while the legislature was in se. was that the general reason?

Mr. ROBERTS. That is what they said about it; yes, sir.

Mr. WALLER. What per cent of those persons would have come, do you think, or have thought about making a visit to Nashville, if there had not been this custom of giving the transportation?

Mr. Roberts. I could not say positively, but my opinion is that there would not 10 per cent of them have come.

Mr. Waller. That is to say, if tickets had to be bought, there would not be more than 10 per cent of them who would have bought tickets?

Mr. Roberts. No, sir: I think not.

Redirect examination:

Mr. Folk. Would they have refused to come or failed to come because of lack of financial ability to come?

Mr. Roberts. Some of them would, and some would not, just because they didn't want to spend the money.

Mr. Folk. They were penurious, then, some of them?

Mr. Roberts. Some of them: yes, sir.

Mr. Folk. But most of them were citizens of influence, were they not?

Mr. Roberts. Well, I presume so, some of them; and some of them were not.

Mr. Folk. As a matter of fact, those who need passes least ask for them most, do they not?

Mr. Roberts. Well, now, that is pretty well divided.

Mr. Folk. What is divided?

Mr. Roberts. The asking, between the influential and the others; that is, those with ability to pay for them and those that are unable to pay.

Mr. Folk. You are not a member of the legislature now?

Mr. Roberts. No.

Mr. Folk. After you ceased to be a member of the legislature these requests to you to obtain passes were not so frequent, were they?

Mr. Roberts. They didn't come at all.

Mr. Folk. So they were made while you were a member of the legislature because you were a member of the legislature?

Mr. Roberts. I supposed they were.

Mr. Folk. And you were able to obtain them from the railroads by reason of the fact that you were a member of the legislature?

Mr. Roberts. Well, I suppose so.

Mr. Folk. And matters in which the railroad was interested would come before the legislature?

Mr. Roberts. Well, I don't know what their object was in giving the passes.

Mr. Folk. That is all.

(Witness excused.)

James H. Koffman was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. Folk. Your name?

Mr. Koffman. James H. Koffman.

Mr. Folk. Where do you live?

Mr. Koffman. Gibson County.

Mr. Folk. What is you occupation?

Mr. Koffman. Farmer.

Mr. **Folk**. Are you a member, or have you been a member of the legislature of this State at any time?

Mr. **Koffman**. A member of the lower house in 1913 and a member of the present State senate.

Mr. **Folk**. After you were elected a member of the lower house were you furnished with an annual pass by the Louisville & Nashville Railroad?

Mr. **Koffman**. Yes, sir; I had had an annual pass for two or three years before I was elected.

Mr. **Folk**. On what account had you received an annual pass before that?

Mr. **Koffman**. I worked in the interest of the department of agriculture and the farmers' union.

Mr. **Folk**. You had been connected with the farmers' union?

Mr. **Koffman**. Yes, sir.

Mr. **Folk**. In what capacity?

Mr. **Koffman**. I went over the State and organized and lectured for the union.

Mr. **Folk**. During the year 1913 you requested a large number of trip passes, did you not, for your constituents?

Mr. **Koffman**. Quite a number; yes, sir.

Mr. **Folk**. Several hundred, in fact?

Mr. **Koffman**. Probably so; I do not know how many.

Mr. **Folk**. Can you tell us, Mr. Koffman, whether in your opinion the pass system is a good or bad thing, from the public standpoint?

Mr. **Koffman**. Well, I think the pass system for agricultural purposes, for the advancement of agricultural purposes, is a good thing.

Mr. **Folk**. What do you mean, for the advancement of agricultural purposes?

Mr. **Koffman**. Well, we have in this State, we have in west Tennessee, the farmers' institute, which meets annually over at Jackson; and, in east Tennessee, the farmers' convention, which meets annually in Knoxville; and, in the middle of the State, we have the farmers' institute, which meets here, for the discussion of agricultural subjects; and we have an experiment station over at Jackson which demonstrates the different seeds and crops, and it is quite an interest to the farmers to attend those conventions and institutes, and I do not think they would attend unless they got free transportation.

Mr. **Folk**. Don't you know they have those institutes in other States very successfully without the aid of passes?

Mr. **Koffman**. Well, I do not know that to be true. I do not know anything about it.

Mr. **Folk**. But you regard the passes as essential to the success of farmers' institutes in this State?

Mr. **Koffman**. I think so; but I do not believe that passes for State officials are a good thing.

Mr. **Folk**. Why not?

Mr. **Koffman**. Well, of course, they would feel under some obligations, I suppose.

Mr. **Folk**. It is human nature to feel obligation for favors received?

Mr. **Koffman**. Yes.

Mr. **Folk**. So you would abolish all passes except passes to farmers?

Mr. **Koffman**. I am of the opinion that it probably would be a good thing.

Mr. **Folk**. That is all.

Chairman **Meyer**. Are these institutes held in only three places in the State of Tennessee?

Mr. **Koffman**. That is all.

Chairman **Meyer**. If, instead of three places, the institutes were held at 30 or 50 places, would you still feel the same way about passes?

Mr. **Koffman**. Well, probably the attendance would be larger if they were held in more places than in just three.

Chairman **Meyer**. In other words, if the institutes would come more nearly to the farmer, would that make any difference, in your view of passes?

Mr. **Koffman**. That would make some difference, I take it.

Cross-examination:

Mr. **Waller**. Senator Koffman, you say, and I agree with you, that it would be best not to have the pass system. Now, one reason why that is is because there is somebody always in politics trying to make something out of it; is not that true?

Mr. **Koffman**. Well, yes; that is true, I suppose.

Mr. **Waller**. Now, was not this last senatorial campaign pitched by one candidate principally upon that one thing, as hostility to the railroads?

Mr. **Koffman**. Well, I could not say that it was; I do not know.

Mr. **Waller**. You did not keep up with the campaign?

Mr. **Koffman**. Well, not so much.

Mr. **Waller**. These passes that were given were given openly, were they not? There was no secret about it?

Mr. **Koffman**. Yes, sir; openly.

Mr. **Waller**. There was no promise made upon the part of the receiver to do any particular thing, was there?

Mr. **Koffman**. None whatever.

Mr. **Waller**. There was no request upon the part of the giver that you should do anything on consideration of giving you the pass, was there?

Mr. **Koffman**. No, sir; nothing.

Mr. **Waller**. And they were given to members of the legislature indiscriminately; I mean whether they were considered friendly or unfriendly to railroad interests?

Mr. **Koffman**. I suppose so. I do not know that to be true, but I suppose so.

Mr. **Waller**. You never heard of any discrimination, anyway?

Mr. **Koffman**. No.

Mr. **Keeble**. You say you have traveled all over the State for the farmers' institutes?

Mr. **Koffman**. In a good deal of middle and west Tennessee.

Mr. **Keeble**. Did you ever go over in east Tennessee?

Mr. **Koffman**. I have been over to Knoxville, to the State Union.

Mr. **Keeble**. Now the same practice of giving passes prevails by the Southern Railway, for example, as prevails by the other railroads, so far as you know; is not that true?

Mr. Koffman. So far as I know. I do not know it to be true.

Mr. Keeble. A great body of the legislators have to come to Nashville over the Southern Railway and Tennessee Central?

Mr. Koffman. Yes, sir.

Mr. Keeble. You have never heard anybody singled out, I mean the public generally, in regard to dealing with the pass problem, as though it were peculiar to any one railroad or any two railroads, have you?

Mr. Koffman. No.

Mr. Keeble. The street car systems of the State, at Nashville, gives books of passes to legislators, do they not?

Mr. Koffman. Yes, sir.

Mr. Keeble. It has been the custom a long time?

Mr. Koffman. Yes, sir.

Mr. Keeble. Now you say, and I agree with you, that you think it would be well to abolish them. There is no issue between us on that count.

Mr. Koffman. It is quite a nuisance to a member of the legislature.

Mr. Keeble. I understand, but I want to ask you this question: Is it not true that this matter has been a matter that has grown up 25 or 30 years, first by one city and then by another—I do not know who started it—but in recent years, that representatives have asked, and the railroads have given them, and the constituents ask for them, and the legislators feel called upon to ask the railroads; and it has got to be a real problem to know what to do with it?

Mr. Koffman. Yes, sir; I think so. It has been as far back as I can remember, almost.

Mr. Keeble. It has been applicable to all kinds of railroads and street railroads, as far as you know?

Mr. Koffman. Yes, sir.

(Witness excused.)

J. V. Walker was called as a witness and, having been duly sworn, testified as follows:

Mr. Folk. What is your name?

Mr. Walker. J. V. Walker.

Mr. Folk. Where do you reside?

Mr. Walker. Tracy City, Grundy County.

Mr. Folk. What is your occupation?

Mr. Walker. Mine contractor.

Mr. Folk. Have you been a member of the Tennessee General Assembly at any time; and if so, when?

Mr. Walker. Yes, sir; I was a member of the senate in the 1913 legislature.

Mr. Folk. Did you receive an annual pass from the Nashville, Chattanooga & St. Louis Railway?

Mr. Walker. Yes, sir.

Mr. Folk. After your election?

Mr. Walker. Yes, sir; I believe it was after election.

Mr. Folk. Did you come to Nashville on an annual pass?

Mr. WALKER. No, sir; I do not think so. I think I received the pass. I am not positive about that. It was either about the time I came or after I got here; I am not sure whether I came on the annual pass or not.

Mr. FOLK. Did you come to Nashville on a trip pass?

Mr. WALKER. Yes; once or twice.

Mr. FOLK. Was the trip pass sent to you at your request?

Mr. WALKER. Yes; the trip pass was.

Mr. FOLK. Didn't the Louisville & Nashville Railroad send you an annual pass?

Mr. WALKER. I am not positive on that, but I believe they did. I did not use it. I never was on the Louisville & Nashville but one time, from McKenzie to Memphis, but I am not positive.

Mr. FOLK. Did any other railroads in the State send you annuals except the Nashville, Chattanooga & St. Louis Railway?

Mr. WALKER. The Southern.

Mr. FOLK. During the year 1913 you requested a large number of trip passes of the N., C. & St. L.?

Mr. WALKER. Yes, sir; that is right, quite a number.

Mr. FOLK. Several thousand dollars worth?

Mr. WALKER. Well, I expect so. I never kept any record of it, because it would have kept me busy during the season to have done it.

Mr. FOLK. Your constituents appeared to be seized with the desire to ride.

Mr. WALKER. Oh, yes; those mountain people up there like to ride almost anything that comes along that is free; they are wild.

Mr. FOLK. Where did they go to chiefly, Nashville?

Mr. WALKER. Practically all to Nashville.

Mr. FOLK. What did they want to come to Nashville for?

Mr. WALKER. Just to see around. A great many of them never had been to Nashville, and just to be at the legislature, and look over the thing.

Mr. FOLK. Were you a member of the legislature when the anti-pass bill came up?

Mr. WALKER. Yes. Well, it never did come up in the senate. There was a bill introduced and I don't think it ever came to a vote in the senate.

Mr. FOLK. Did you express yourself either for or against that measure?

Mr. WALKER. No, sir; I don't think I did. I was really not fully decided on how I would vote on it should it come to a vote.

Mr. FOLK. You were not quite certain then whether the pass system was a good or bad thing from the public standpoint?

Mr. WALKER. No; I was not at that time; I was not fully decided.

Mr. FOLK. How are you now?

Mr. WALKER. Well, I believe it would be to the best interest now of the State to abolish the system; that is my idea.

Mr. FOLK. Why do you think so?

Mr. WALKER. Well, when I first came to the legislature I thought the free-pass system was a good thing, but the more I saw of it it became a nuisance to the members of the legislature, and that is one reason why I was against it, and then public sentiment has become poisoned, if I should call it that, on that thing, and I believe it would be best for all interests to abolish the pass system for the people.

Mr. **Folk.** Do you think the people of your county favor the pass system or are opposed to it?

Mr. **Walker.** Well, then, it looked like that they all favored it, but if they express themselves in both ways that is a hard thing to determine.

Mr. **Folk.** From your experience as a legislator would you say that the legislators have sentiments of gratitude for favors the same as other human beings?

Mr. **Walker.** Yes.

Mr. **Folk.** And when they receive passes and obtain passes in large amounts there is a certain obligation accruing from these favors?

Mr. **Walker.** Well, I could not state as to the obligation, but it is human nature to be grateful for any favor bestowed.

Mr. **Folk.** And these passes in that way have their influence to that extent?

Mr. **Walker.** Well, certainly, they reach that form.

Mr. **Folk.** You are not a member of the legislature now?

Mr. **Walker.** No.

Mr. **Folk.** Since you ceased to be a member the requests for passes have not been so frequent, have they?

Mr. **Walker.** No; I do not know that I have had but very few since that.

Mr. **Folk.** Of course that shows that these requests for passes while you were a member were made because you were a member?

Mr. **Walker.** Certainly.

Mr. **Folk.** And it is fair to assume that the railroads granted your requests for these passes because you were a legislator?

Mr. **Walker.** Yes, sir.

Mr. **Folk.** That is all.

Cross-examination:

Mr. **Waller.** And really because it had been the custom, is not that it?

Mr. **Walker.** Well, it had been the custom, so far as I can remember, and I suppose that is right.

Mr. **Waller.** And in giving you that transportation you were treated just like every other member of the general assembly?

Mr. **Walker.** I suppose so.

Mr. **Waller.** Now, Mr. Walker, what proportion would you think of these persons who requested you for transportation would have come to Nashville except for the free transportation?

Mr. **Walker.** Well, not a great many of them. Perhaps three-fourths would not have come.

Mr. **Waller.** Perhaps three-fourths would not have come?

Mr. **Walker.** I think that would be a fair estimate.

Mr. **Waller.** Now, you say that a member of the legislature would feel grateful for getting a pass. Do you mean by that that it would interfere with his duty to the public and to his community as a member of the legislature?

Mr. **Walker.** Not at all; I do not think so.

Mr. WALLER. You do not think that a pass given to a member of the legislature is such a thing of consequence as to warp his judgment?

Mr. WALKER. I think not.

Mr. WALLER. Or to corrupt his honor as to legislation?

Mr. WALKER. I do not think so. I do not think that the people, after a man fighting through a campaign for office, would send a man down here of that kind, that could be influenced.

Mr. WALLER. Now, is not that—for instance, you would not say if a man secured a position of public office through another public officer that because he supported him he had been corrupted, would you?

Mr. WALKER. No.

Mr. WALLER. And that is what is done in politics every day, to give your friends offices where you can.

Mr. WALKER. Yes; that is generally the practice, I believe.

Mr. WALLER. Had you ever been in the legislature before you were sent here?

Mr. WALKER. No; that was my first term.

Mr. WALLER. Was there any agitation in your community in regard to this matter?

Mr. WALLER. Very little. We do not know much about railroads, you know, up in the mountain country. We just have one little branch line, and people do not have much to say about it; they do not know anything about it practically except what they seen in the papers, and there is not much said about it.

(Witness excused.)

Mr. FOLK. The next witness will be Mr. Carleton, the examiner of the commission.

Chairman MEYER. We will adjourn until 10 o'clock to-morrow morning.

Mr. KEEBLE. Mr. Commissioner, we took an exception to this line of testimony this morning upon one ground. We have made no further objection, and it has been gone into very fully, and I suppose that Gov. Folk is pretty nearly at the end of his line of individual witnesses on this subject. We would like to be understood now as making this point before this commission, after it has all been brought out and any publicity proposition that anybody cares to use is made, that we do not think that these witnesses have testified to any fact that gives any additional information to the commission upon which the commission could make an order. You have had before you for months practically all of this information, except bringing these reports down to date, which has been done by your examiners. There has been no disposition to deny the issuance of this transportation nor any disposition to defend it or justify it.

Chairman MEYER. You do not mean to suggest that the commission could make an order on the information compiled for it by its examiners?

Mr. KEEBLE. I mean to say there we come in in our answer in reply, for instance, to Senator Lea's petition and say that we do not deny the issuance of transportation, and there is no disposition on the part of these railroads to deny these facts. I do not know all the details about these examiners, but, as I understand it, this commission has only two powers upon which it can issue any order in regard to transportation: and I believe my friend Gov. Folk will concede that. I believe he will concede, notwithstanding his elaborate examination of witnesses, that this commission is not concerned with the morals of the question; that it does not sit for the formulation of a set of principles to recommend to the Democratic Party in the State of Tennessee, nor has it anything to do with the State policy. I conceive that this commission would have only and has only two possible grounds upon which it can consider the issuance of intrastate passes. One would be if the commission believed, as a matter of law, that the issuance of intrastate passes constitutes a burden upon interstate commerce, and that under the interstate-commerce act as it now stands the commission has authority upon that ground to prohibit them, that would be one ground. Now, our reply and our attitude now is that if this commission believes it has that power and will make it applicable to all the carriers within its jurisdiction, we will not resist it, but we will obey it. That has been before your commission for months, so that, in so far as these facts are concerned, the only possible bearing that they can have is a question of discussion of moral policies. We get nowhere.

Why, passes have been issued, as could easily be shown, by practically every common carrier in the State of Tennessee, more or less according to the geographical situation. Nobody denies that. And if this commission, as we said in our reply to Senator Lea's petition, which was directed to the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Co. alone, if the commission thought it had the jurisdiction upon the broad policy that the law justified the issuance of such an order, and it would make it applicable to all carriers within its jurisdiction, we have no disposition to resist.

Chairman MEYER. Must not the commission have a record upon which to make an order?

Mr. KEEBLE. How? You had the passes before you.

Chairman MEYER. Just a moment. Is that a record, Mr. Keeble?

Mr. KEEBLE. Well, it is——

Mr. FOLK. Did you not object in your answer that you filed with the commission, on the very ground that the commission based its report to the senate on ex parte testimony?

Mr. KEEBLE. Not at all. We merely objected to certain sweeping statements in the report, but we never objected or denied the facts in regard to the issuance of passes.

Chairman MEYER. But even so, you do not take the position that the commission can make an order in this or any other matter without a record?

Mr. KEEBLE. No; and I take it that if the commission wants the information it could all be obtained, in so far as the issuance of passes is concerned, by the examiners bringing their reports here and submitting them to us, and they would be adopted and you could file them and it would save time and money and get just as far as you are getting now, in so far as the issuance of any order that would be valid is concerned.

Chairman MEYER. I understand that chief counsel has just reached that point in this proceeding, where he wants to offer the material gathered by the examiners, and perhaps before we resume to-morrow morning that can be checked over and some expeditious manner of putting that in the record can be agreed upon, and I should be very glad if it could be done.

Mr. **Keeble.** Now, if Gov. Folk can point out to me any jurisdiction in the commission by which it can undertake to determine for the State of Tennessee as to whether it is wrong or whether it is best, whether it is wise to abolish the passes or not, or is a matter of recommending itself to the individual judgment of the people of the State, I would be glad to hear on that question. Of course, I do not think he has ever had any such notion as that, he is too good a lawyer for that, and has had too much experience.

We have not made any captious objection on that subject because we have never had anything to hide on the subject. And yet I feel like we have spent a whole day getting nowhere at all, in so far as this commission can make an order, and I would like to say that we would like to have the commission rule on that, because it is entirely possible——

Mr. **Folk.** Rule on what?

Mr. **Keeble.** Rule on the question that all these questions about individuals and why a man rides on a pass, and whether a man thinks he ought or ought not to ride on a pass—in other words, the evolution of a man's mind on the question of passes. Why, it is a very remarkable thing that a man rides on a pass all his life and then gets out of politics and thinks it is wrong, and some people stay in politics and do not ride on them, and some people ride on them and newspapers ride on them. For years the daily papers in Nashville have had them, until one of them cut them out about a year ago. Now, nobody cares if they want to ride on them, or if they do not. I think it is a question of law rather than bringing people here from all over the State to testify whether they think their constituents are in favor of this system. Now, is this commission going to decide this question on the question whether the constituents of Mr. Cochran or Senator Hare or the constituents of any other gentlemen would vote to have a pass or not to have a pass? Is this tribunal interested in the question of passes? Of course, we all know Senator Lea is.

Mr. **Lea.** I would like to make an observation. I was gratified on the change of basis of the attorneys for the railroads, although not surprised after the developments of to-day. If the commission please, when this petition was filed by me it raised a purely legal question, the question which Mr. Keeble has now stated. The railroads saw fit not to regard it as a legal question, but for the purpose of giving vent to their spite and venom, filed an answer which raised all the political issues in Tennessee which have been before the State for many years, and naturally when the testimony to-day has developed along the lines of the answers, the attorneys for the railroads desire now to attack the position raised in the petition. When the petition was filed it was filed merely to raise a single legal question, whether the Interstate Commerce Commission had the power to prohibit intrastate passes, believing that it constituted a discrimination in interstate traffic, and that was the position that was in the petition, and that which Mr. Keeble now takes is entirely foreign and different from the answer which he filed in that petition.

Mr. **Jouett.** There is one suggestion. It was alleged in that petition, and that was the only competent allegation as we understood it, that passes had been furnished intrastate for the purpose of influencing interstate traffic, as a sort of rebate to shippers to induce them to use one of these lines rather than other lines. Now, upon that question no evidence has been offered.

Mr. LEA. Then if that is the case——

Mr. JOUETT. If any other evidence is to be offered we will go ahead with it, of course, but we had to defend that because, as we understood it, that was absolutely without foundation.

Mr. LEA. Mr. McConico is not present now, but he stated at the outset of the hearing that after the testimony had been concluded on the part of the chief counsel for the commission, we asked to reserve the privilege of producing such testimony as we may find to be necessary, and we will act upon it at that time.

Mr. JOUETT. Yes; and I was just referring to your answer to our defense.

Chairman MEYER. Mr. Folk, have you anything further to say?

Mr. FOLK. Nothing. I do not think the case has reached a stage where argument is appropriate. I presume the commission will pass upon these matters at the proper time.

Mr. KEEBLE. We will stay as long as you want to stay on the subject. I understand, so far as the introducing of the testimony about the issuance of individual passes, either side can just go on and bring in anybody they want to.

Mr. FOLK. We will pass upon that when it comes up.

Mr. KEEBLE. I say, assuming that, we will go on in the same general way we have to-day.

Mr. FOLK. I can inform you, according to the present plans the next witness will be an examiner for the commission.

Chairman MEYER. Right there I repeat the suggestion that if counsel can agree upon some expeditious method of introducing that information, that would be very desirable, and that can be conducted informally before we proceed. We will, therefore, adjourn until 10 o'clock to-morrow.

(Whereupon, at 5.35 p. m., an adjournment was taken to Friday, April 28, 1916, at 10 a. m.)

LOUISVILLE & NASHVILLE RAILROAD CO.

FRIDAY, APRIL 28, 1916.

NASHVILLE, TENN.

Met pursuant to adjournment.

Present: Parties as before.

HARRY WILLIAMSON was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your name?

Mr. WILLIAMSON. Harry Williamson.

Mr. FOLK. Where do you live?

Mr. WILLIAMSON. Huntingdon, Carroll County.

Mr. FOLK. What is your occupation?

Mr. WILLIAMSON. I am now deputy clerk and master of the chancery court.

Mr. FOLK. What was your former occupation?

Mr. WILLIAMSON. Teaching.

Mr. FOLK. Were you a member of the General Assembly of the State of Tennessee at any time?

Mr. WILLIAMSON. I was a member of the fifty-eighth general assembly.

Mr. FOLK. From what year to what year?

Mr. WILLIAMSON. 1913 and 1914.

Mr. FOLK. Did you receive an annual pass from the Nashville, Chattanooga & St. Louis Railway after your election to the legislature?

Mr. WILLIAMSON. Yes, sir; I received a pass for the first six months, and then at the end of the six months it was renewed, as I remember it.

Mr. FOLK. Did you come to Nashville on an annual pass or on a trip pass?

Mr. WILLIAMSON. On the annual.

Mr. FOLK. What other roads gave you annual passes?

Mr. WILLIAMSON. The Louisville & Nashville Railroad and the Tennessee Central and, I believe, the Southern. I was not on the Southern and did not use it any, but I think I had one.

Mr. FOLK. From your experience as a legislator, Mr. Williamson, will you tell us whether or not, in your opinion, legislators are influenced by receiving pass favors from railroads?

Mr. WILLIAMSON. I can not keep from believing that they are to some extent. That will depend, of course, on the man; but I feel that legislators are sometimes influenced by the use of passes.

Mr. **Folk**. You had an annual pass over the Nashville, Chattanooga & St. Louis Railway; that is, during the year 1913?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. Were you there when the antipass bill came up?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. You voted for that, did you?

Mr. **Williamson**. I was in favor of the antipass bill and voted for it.

Mr. **Folk**. Were you there when the fellow-servant bill came up?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. You voted for that?

Mr. **Williamson**. I did.

Mr. **Folk**. Were you there when the full-crew bill came up?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. You voted for that?

Mr. **Williamson**. Yes, sir. Some of these just came in the committee, and I voted in the committee.

Mr. **Folk**. Were you there when the electric-headlight bill came up?

Mr. **Williamson**. I do not remember whether the electric-headlight bill ever came up in our committee or not; but I was for the electric-headlight bill and outspoken for it.

Mr. **Folk**. You made a number of requests on the Nashville, Chattanooga & St. Louis Railway during the year 1913?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. For trip passes to different people?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. Did you notice any difference in the treatment by the N., C. & St. L. of your requests for trip passes after you voted for these bills the railway did not wish and the treatment you received before?

Mr. **Williamson**. I felt like they didn't treat me the same.

Mr. **Folk**. Well, in what way did they not treat you the same?

Mr. **Williamson**. Well, when I first came to Nashville and first went to the office of the N., C. & St. L. I never received much more royal treatment anywhere than I received on that occasion; and I remember on one occurrence that I was going over to Lebanon—that was just before the legislature met—and one gentleman in the office—I had already bought my ticket over the Tennessee Central—that was before I was very well acquainted with the pass business and——

Mr. **Folk**. When you were green, was it?

Mr. **Williamson**. Yes, sir. And he spoke right away that he really regretted I had bought that ticket.

Mr. **Folk**. Who was that?

Mr. **Williamson**. That was Mr. Hudson.

Mr. **Folk**. D. G. Hudson?

Mr. **Williamson**. Yes, sir.

Mr. **Folk**. Go ahead.

Mr. **Williamson**. And as the legislature proceeded I felt like that those gentlemen were not as friendly to me as they were in the beginning. They continued granting me passes, I will admit, all along to some extent, but it seemed to me that they grew cooler toward me, and I could not figure that they had any reason, as I had not mistreated either one of them personally.

Mr. **Folk**. How was this coolness manifested?

Mr. **Williamson.** Well, in looking like they did not care very much about giving me passes when I would write them for my friends—just simply the expression.

Mr. **Folk.** When you voted for the full-crew law, did any of them say anything about your vote?

Mr. **Williamson.** As I remember, when the senatorial committee—I think it was a joint session of the senatorial and house committees—held in the senate one morning, as I remember, I was the only person in that committee that voted for the full-crew law. And Mr. McConnell met me out in the hall after it was over and just asked me why I was for that bill, or why I voted for that bill, or something to that effect. He did not, of course, speak it as though he were mad or anything like that, but just asked me why I was for that bill or why I voted for that bill.

Mr. **Folk.** After you voted for these measures that the N., C. & St. L. opposed, and your requests for passes began to be treated with indifference, as you thought, did you call upon the president of the Nashville, Chattanooga & St. Louis Railway?

Mr. **Williamson.** That was not until in 1914, after the legislature was through; and I will explain——

Mr. **Folk.** After the legislature was over, was your pass renewed for the year 1914?

Mr. **Williamson.** No, sir.

Mr. **Folk.** It was not?

Mr. **Williamson.** No, sir.

Mr. **Folk.** The passes of the other members who you knew had voted as the railroad desired them to vote were renewed?

Mr. **Williamson.** I understood that they were.

Mr. **Folk.** Did you see the president of the N., C. & St. L. about the failure to renew your pass?

Mr. **Williamson.** The president of the N., C. & St. L. came to Huntingdon and spoke.

Mr. **Folk.** Did what?

Mr. **Williamson.** Came to Huntingdon and made a speech—I think it was in the spring of 1914, and in that speech I remember one of his statements was that if any man had been mistreated by his road he would be glad to take the matter up. It was something to that effect, and I felt like if it were the custom of the railroad to give passes to members of the legislature, as I understood that it was, that there was no reason for discriminating between me and other members, and I sat down and wrote him and stated this fact to him.

Mr. **Folk.** Did you hear from him in response to that letter?

Mr. **Williamson.** Yes, sir; he stated that the first time I was in Nashville he would be glad to take the matter up with me.

Mr. **Folk.** Did you take the matter up with him?

Mr. **Williamson.** I wrote him it would not be possible for me to come to Nashville, and I think he wrote in answer to that. I have those letters, but I have not them with me; but I think he answered to that that he was considering very seriously the moral question involved in giving passes to the members of the legislature. Then I wrote him that I could not understand why the moral question would apply only to my case, and about then our correspondence ceased; and I exchanged some three or four letters with him.

Mr. FOLK. I show you here a copy of letter of date December 24, 1912, addressed to Mr. D. G. Hudson, Nashville, purporting to be signed by yourself, and will ask you if you wrote the original.

Mr. WILLIAMSON. Yes, sir; I think I did.

Mr. FOLK. Just read the letter, please.

Mr. WILLIAMSON (reading):

Mr. D. G. HUDSON, *Nashville, Tenn.*

MY DEAR SIR: Will you please send Prof. G. L. Meek, of McKenzie, Tenn., transportation from McKenzie to Nashville and return?

Mr. Meek is interested in the improvement of the school law, and I think he will be a help to me in getting myself on a committee.

Mr. FOLK. Why did you write to Mr. Hudson, the representative of the railroad, to do a favor for Mr. Meek in order to have Mr. Meek get you upon a committee in the legislature?

Mr. WILLIAMSON. Well, Mr. Meek saw me and wanted to come to Nashville, and Mr. Meek and I live down there in the county together and were very much interested in school laws; and I was very anxious, as being a teacher, to be on the educational committee; and Mr. Meek was acquainted with other members of the legislature, and I felt like if he came up he would be able to help.

Mr. FOLK. Why did you write that to Mr. Hudson, the representative of the railroad?

Mr. WILLIAMSON. For the purpose of getting a pass for Mr. Meek. I knew it was the——

Mr. FOLK. You used the argument to induce him to grant your request for a pass.

Mr. WILLIAMSON. Well, I felt like if he knew that Mr. Meek was coming up here, I knew it was their custom to give passes, and I felt like if he knew he was coming up for some specific work, and not merely to come to Nashville, he would give him a pass.

Mr. FOLK. From your experience as a legislator, Mr. Williamson, will you tell us whether you think the pass system is a good or bad thing from the standpoint of the public?

Mr. WILLIAMSON. Well, from my experience with the pass system, I believe it is a bad thing.

Mr. FOLK. In what way is it a bad thing?

Mr. WILLIAMSON. From the fact that I feel like it will just go on out through the country and influence many people, as I stated in the beginning.

Mr. FOLK. The pass is used to place legislators under obligations to the railroad issuing the pass, is it?

Mr. WILLIAMSON. I can not say that that is what the railroad company has in view. I can not say what they have in view, but I feel like it does place many people under obligation, that they feel like it does.

Mr. FOLK. Is not the railroad pass the chief weapon of the lobbyist?

Mr. WILLIAMSON. Well, that is the only thing I ever heard of them using.

Mr. FOLK. I say, is not the railroad pass the chief weapon of the lobbyist?

Mr. WILLIAMSON. That is the only thing I ever heard of the railroad lobbyists using. They were always up there, and that is the only thing I understood that they were offering. I do not suppose—I don't know.

Mr. Folk. The lobbyist for the railroad uses the free pass to place legislators under obligation to him and his railroad. Is not that your experience?

Mr. Williamson. Well, my experience is just this, that the railroad company always had attorneys up at the capitol and those gentlemen gave out the passes, and, of course, as to whether their purpose was for the purpose of influencing the legislators, I do not personally know, but as stated, I felt that it did influence them upon many occasions.

Mr. Folk. What would you deduce from the fact that you had a pass and then you voted against bills that the railroad favored and your pass was not renewed, but the passes of members who voted as the railroad desired them to vote were renewed? What would you deduce from that?

Mr. Williamson. I could not deduce anything else, only the fact that they did not approve of my procedure.

Mr. Folk. That they used passes to influence legislation, is not that correct?

Mr. Williamson. Well, you would have to figure it that way; yes, sir.

Mr. Folk. That is all.

Cross-examination:

Mr. Waller. Mr. Williamson, what is your business?

Mr. Williamson. I am deputy clerk and master of chancery court.

Mr. Waller. Where?

Mr. Williamson. Huntingdon, Carroll County.

Mr. Waller. Carroll County?

Mr. Williamson. Yes.

Mr. Waller. When did you first come to the legislature?

Mr. Williamson. In 1913. I was elected in 1912, and the first trip I made was at Thanksgiving.

Mr. Waller. Did you know Mr. Hudson when you wrote to him in December, 1912?

Mr. Williamson. The first time I ever wrote to Mr. Hudson I do not think I had met him personally.

Mr. Waller. Before you got here, you wrote for transportation for a friend of yours?

Mr. Williamson. I had met him then. I met him Thanksgiving, 1912. I came up to arrange a boarding place and to get a seat in the house, and met Mr. Hudson.

Mr. Waller. Where did you meet him?

Mr. Williamson. Down at the office.

Mr. Waller. You went down there?

Mr. Williamson. Yes.

Mr. Waller. And you say you were treated royally?

Mr. Williamson. Yes, sir.

Mr. Waller. How do you mean by that, do you mean he shook your hand and said he was glad to see you?

Mr. Williamson. Very pleasant; yes, sir.

Mr. Waller. That is what you call royal entertainment?

Mr. Williamson. Yes, sir.

Mr. **Waller**. He did not provide an entertainment and invite the public?

Mr. **Williamson**. No; he had no banquet.

Mr. **Waller**. Just shook your hand and said that he was glad to see you?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. That is what you call royal entertainment?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. Well, you certainly were easily entertained.

Mr. **Williamson**. Yes, sir; very much so.

Mr. **Waller**. When did you vote against the fellow-servant bill, at what time did that come up?

Mr. **Williamson**. I don't remember when any of those bills came up. I do not remember the date. The records, of course, will show that, and——

Mr. **Waller** (interposing). Well, all of those bills came up in the first session of the legislature, did they not?

Mr. **Williamson**. I think maybe they did.

Mr. **Waller**. Now, you say that you noticed a difference in their actions toward you after you voted against these bills. But you still asked for transportation, did you not?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. You still got it?

Mr. **Williamson**. Yes, sir; I got it.

Mr. **Waller**. As you had before?

Mr. **Williamson**. I don't think so. I do not think I got altogether as much as I did before.

Mr. **Waller**. Do you know how much you got?

Mr. **Williamson**. No; I got a considerable number of passes; I do not know how much.

Mr. **Waller**. Mr. Folk, have you got the number?

Mr. **Folk**. I think we have.

Mr. **Waller**. Well, your examiner will go on later, will he not?

Mr. **Folk**. Yes.

Mr. **Waller**. Now, at one time, though, somebody asked you somebody connected with the railroad, I believe you say Mr. Mc Connell, why you voted for the full-crew bill?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. Did you tell him?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. What did you tell him?

Mr. **Williamson**. I told him I was for it personally, and that it was a good thing.

Mr. **Waller**. I mean did you answer the question why you vote for it, the reasons you were in favor of it?

Mr. **Waller**. You were for it?

Mr. **Williamson**. Yes, sir.

Mr. **Waller**. Your annual pass—that is, your card pass, was issued to expire when, at first?

Mr. **Williamson**. I just said simply because I was for it; I think that is all the reason I gave.

Mr. **Williamson**. June, I think it was.

Mr. **Waller**. Now, after you had voted against all these bills the card pass was renewed for the rest of the year?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** I understood you to say.

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** You still continued to get transportation, did you not, at the extra sessions of the legislature?

Mr. **Williamson.** I think we got some little transportation; I do not remember how much, at the extra sessions.

Mr. **Waller.** Have you any idea how many passes you did get?

Mr. **Williamson.** No, sir; I have not much idea. I got a considerable number; I imagine I got some—oh, perhaps over 300, I do not know. This is just guesswork. I did not keep any record of that.

Mr. **Waller.** You did not regard that as royal entertainment. You just——

Mr. **Williamson.** Well, what I had reference to——

Mr. **Waller.** You regarded that they were rather indifferent to you, did you not?

Mr. **Williamson.** If you will allow me to explain, when I spoke of being treated royally, I simply meant that they were extremely friendly to me.

Mr. **Folk.** They were cordial?

Mr. **Williamson.** Cordial.

Mr. **Waller.** And you had come to that office and they had met you pleasantly?

Mr. **Williamson.** Yes, sir; like most any other man would do if you came to his office.

Mr. **Waller.** I thought you were trying to emphasize that they were something different.

Mr. **Williamson.** Oh, no. I think, nothing any more than like most any other public man would do.

Mr. **Waller.** They met you like they would any stranger or acquaintance that would come to their office?

Mr. **Williamson.** Well, they did not in this respect; they would not have given any other man that came to their office if he had not been a member of the legislature, passes; but I suppose they would have treated them the same as they did me; they would not have insisted on giving him a pass over to Lebanon.

Mr. **Waller.** Well, you took it?

Mr. **Williamson.** Over to Lebanon?

Mr. **Waller.** Yes.

Mr. **Williamson.** No; I had already had my ticket bought over the Tennessee Central. I would if I had not.

Mr. **Waller.** Now, you say, as I understood Gov. Folk rather suggested to you, that those who voted against these bills got passes for the next year, and those who did not did not get passes. Do I understand you to say that as a fact?

Mr. **Williamson.** How is that question now?

Mr. **Waller.** Gov. Folk rather assumed in a question which he asked you that those who voted against these bills received the card pass for the next year, and those who voted for them did not receive them. Do you know that to be the fact?

Mr. **Williamson.** Nothing, only in my case.

Mr. **Waller.** Your case is the only one you know about?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** How many letters did you write to the president about this transportation in 1914?

Mr. **Williamson.** I think we exchanged some three or four letters, I do not know just how many. I have my letters but I have not them with me.

Mr. **Waller.** You were rather persistent about it, were you not?

Mr. **Williamson.** I wanted to get him to express himself. I wanted to know why, that was the main object of my letter, was to know why he had issued them to others and did not to me.

Mr. **Waller.** Do you know as a fact, Mr. Williamson, that you were not the only man in the legislature who voted for these bills?

Mr. **Williamson.** Yes; there were other people.

Mr. **Waller.** And don't you know there were quite a large number who voted for these bills?

Mr. **Williamson.** Quite a number

Mr. **Waller.** And there were quite a number of the legislators?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** And don't you know those members got passes just as those who voted?

Mr. **Williamson.** I can not say that I do, because they did not live in my district and I was not associated with them. Do you mean during 1914?

Mr. **Waller.** 1913, while it was in session.

Mr. **Folk.** 1914 he was speaking of.

Mr. **Waller.** I am speaking of 1913, when all these members of the legislature requested this transportation, those who voted for the bills were getting the transportation like those who voted against the bills?

Mr. **Williamson.** I can not say, only for myself, I got them during 1913, although I voted for these bills and got the passes.

Mr. **Waller.** Did you have a street car pass while you were here in Nashville?

Mr. **Williamson.** I could get passes, just go down and get a little trip book of about six on the pass. They did not issue any card pass, or anything like that.

Mr. **Waller.** They issued tickets, though?

Mr. **Williamson.** Yes; I sometimes got those.

Mr. **Waller.** You sometimes got those?

Mr. **Williamson.** I did not make very much of a practice of it, but I sometimes did.

Mr. **Waller.** And you say you had transportation over the Southern Railway?

Mr. **Williamson.** I think I had a card pass over the Southern Railway.

Mr. **Waller.** Tennessee Central?

Mr. **Williamson.** I think so; yes, sir.

Mr. **Waller.** Louisville & Nashville Railroad?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** Nashville, Chattanooga & St. Louis Railway?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** Did you have any over either of the roads in west Tennessee?

Mr. **Williamson.** No.

Mr. **Waller.** You did not have occasion to travel over them?

Mr. **Williamson.** I travel over them sometimes, but did not have a pass. I did not have to travel on them coming over here.

Mr. **Waller.** Coming to Nashville you did not travel over them?

Mr. **Williamson.** No, sir.

Mr. **Waller.** These persons you secured transportation for were constitutents of yours or acquaintances or friends of yours in Carroll County, were they not?

Mr. **Williamson.** Yes, sir; constituents. I represented three counties and I sometimes got them from——

Mr. **Waller.** That transportation was generally to Nashville, was it not?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** Those persons, as a general thing, wanted to come to Nashville during the term of the legislature?

Mr. **Williamson.** Yes, sir.

Mr. **Waller.** Now, Mr. Williamson, could you give any estimate of what proportion of those persons would have come if they had not had the free transportation?

Mr. **Williamson.** Well, not but a very small per cent.

Mr. **Waller.** A very small per cent would have come; is not that true?

Mr. **Williamson.** Yes, sir; if they had not had free transportation, a very small number would have come.

Mr. **Waller.** Do you think as many as 5 per cent of them would have come if they had not had free transportation?

Mr. **Williamson.** Well, sir, that would be a very rough guess; I could not say just what per cent. Some of those men who came really came interested in seeing that the bills were passed and would have likely made the trip, even if they had borne their own expenses, but I think it was a very small per cent. I do not believe I could venture a guess.

Redirect examination:

Mr. **Folk.** When you spoke of going down to the office of the N., C. & St. L., just after your election and of your reception there, you mean that your reception was cordial, do you?

Mr. **Williamson.** Yes, sir.

Mr. **Folk.** You were warmly received?

Mr. **Williamson.** Yes, sir.

Mr. **Folk.** After you voted against bills or for bills that the railway opposed, their manner toward you cooled off, did it?

Mr. **Williamson.** I felt that it did.

Mr. **Folk.** Do you know whether or not other legislators in your district who voted as the railway wished received passes for 1914?

Mr. **Williamson.** Well, I can not say just how these gentlemen from my district voted; I can not say just how they voted; but——

Mr. **Folk.** Do you know whether they voted against the fellow-servant bill?

Mr. **Williamson.** I think maybe they were opposed to it; yes; but——

Mr. **Folk.** Do you know Senator McKinney? Is he in your district?

Mr. **Williamson.** Yes, sir; he is my senator.

Mr. **Folk.** He voted against the fellow-servant bill, did he not?

Mr. WILLIAMSON. I can not say about that, because he was in the senate and I was in the house. I feel that he did. I think I heard him express himself that he was against the fellow-servant bill.

Mr. FOLK. Did he not talk with you about the free-pass bill and say he was against it and you did not agree with him on it?

Mr. WILLIAMSON. I do not recall whether we talked about that or not; I believe we did. I think we disagreed on the headlight bill.

Mr. FOLK. On the headlight bill?

Mr. WILLIAMSON. I feel sure we did on that.

Mr. FOLK. You were in favor of it?

Mr. WILLIAMSON. Yes.

Mr. FOLK. You were opposed to the railroad side on that question?

Mr. WILLIAMSON. Yes, sir.

Mr. FOLK. And he was opposed to the bill?

Mr. WILLIAMSON. As I remember it, he told me he voted against it in the senatorial committee.

Mr. FOLK. His pass was renewed for the year 1914, was it not?

Mr. WILLIAMSON. I think that it was. I did not see it.

Mr. FOLK. And your pass was not renewed?

Mr. WILLIAMSON. No, sir.

Mr. WALLER. Have you a brother that is a locomotive engineer?

Mr. WILLIAMSON. No; I have not any brother at all. I have a brother-in-law that is a conductor on the Illinois Central—extra conductor.

(Witness excused.)

JOHN W. MCKINNEY was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your name?

Mr. MCKINNEY. John W. McKinney.

Mr. FOLK. Where do you live?

Mr. MCKINNEY. Whitthorne, Carroll County.

Mr. FOLK. What is your occupation?

Mr. MCKINNEY. Insurance agent and farmer.

Mr. FOLK. Were you a member of the State Senate of the Tennessee General Assembly at any time?

Mr. MCKINNEY. Yes, sir; I was a member in 1909 and 1913.

Mr. FOLK. Did you have a pass over the N., C. & St. L. Railway before you were elected to the State senate?

Mr. MCKINNEY. Before I was elected?

Mr. FOLK. Yes.

Mr. MCKINNEY. No, sir.

Mr. FOLK. After you were elected to the State senate did you receive an annual pass on the Nashville, Chattanooga & St. Louis Railway?

Mr. MCKINNEY. Yes, sir.

Mr. FOLK. How long after your election was it before you received this annual pass?

Mr. MCKINNEY. Well, when I came to Nashville to the session I bought my ticket up here.

Mr. FOLK. You really paid for a ticket, did you?

Mr. MCKINNEY. Yes, sir.

Mr. FOLK. Good money?

Mr. McKinney. Yes, sir; I have done that once or twice.

Mr. Folk. How long were you here before you——

Mr. McKinney. That was in 1909?

Mr. Folk. Yes, sir.

Mr. McKinney. In 1913 I received my pass before I came here.

Mr. Folk. You had learned more by that time, had you?

Mr. McKinney. Yes; just a little while before.

Mr. Folk. What other roads furnished you with annual transportation while you were State senator?

Mr. McKinney. Well, the L. & N., Tennessee Central, and the Southern, and I believe I had a ticket book over the I. C. Railroad, but never did use it any. The N., C. & St. L. was the one that I used most.

Mr. Folk. What do you mean by a ticket book? Is it a book of tickets?

Mr. McKinney. A little book that had 50 tickets in it. You could just ride where you wanted to go. I never saw one like it before.

Mr. Folk. That was furnished to you without cost?

Mr. McKinney. Yes.

Mr. Folk. During the year 1913 you requested from the N., C. & St. L. a very large number of trip passes, did you not?

Mr. McKinney. Yes; quite a lot.

Mr. Folk. In fact, you asked for 517 trip passes during the year?

Mr. McKinney. I suppose it is something like that. I never kept any account.

Mr. Folk. And these were used, and they represent mileage of a value of $5,655.94 for that one year. Did you ever estimate the value of the mileage represented by those passes?

Mr. McKinney. No, sir; I never did.

Mr. Folk. The antipass bill came up in the house while you were a member of the senate, did it not?

Mr. McKinney. Yes, sir.

Mr. Folk. What was your position on the antipass bill; were you for it or against it?

Mr. McKinney. Well, I was kind of undecided about it; I was worried greatly over this pass question.

Mr. Folk. Why were you worried greatly over this pass question?

Mr. McKinney. Because I was harassed so by my people sending for passes all the time, and the correspondence and worry of it. Sometimes I would get 20 or 25 letters on my desk of a morning, and I kind of thought I would vote for the bill.

Mr. Folk. You rather thought you would vote to stop the pass system?

Mr. McKinney. Yes, sir.

Mr. Folk. Did you consider the pass system as an evil from the standpoint of the public?

Mr. McKinney. Well, I studied over that a great deal. It had some good features and some bad, and I could hardly come to a conclusion what was best, which outweighed the other.

Mr. Folk. Did you feel any gratitude for the favors shown you by the railroads?

Mr. McKinney. Why, naturally, of course. I feel some gratitude.

Mr. Folk. Yes. It is human to feel grateful for favors received, is it not?

Mr. McKinney. It is, of course.

Mr. Folk. And you are only human?

Mr. McKinney. Only human.

Mr. Folk. And other legislators are likewise human?

Mr. McKinney. Where I knew I always voted——

Mr. Folk. What?

Mr. McKinney. Sometimes I voted against the railroads and sometimes for them.

Mr. Folk. Tell us what bills the railroads wanted that you voted against.

Mr. McKinney. The railroads were not wanting bills very bad; it was somebody else.

Mr. Folk. Well, all right, tell us what variety of bill the railroad opposed which you voted for.

Mr. McKinney. I voted for the Memphis grade-crossing bill, because I knew that bill ought to be passed.

Mr. Folk. What other bill?

Mr. McKinney. That is the only one I think I voted for.

Mr. Folk. During all your legislative experience you only recall one local measure in which you voted as the railroads did not desire you to vote; is that so?

Mr. McKinney. Well, I only had the opportunity—I was in the senate, and those bills were always killed in the house before they got to the senate.

Mr. Folk. They killed them before they got to you?

Mr. McKinney. Yes, sir.

Mr. Folk. Did these come before any committee in the senate?

Mr. McKinney. Yes, sir. Sometimes they would come before committees.

Mr. Folk. Can you tell any measure before any committee of the senate that you voted on contrary to the wishes of the railroads?

Mr. McKinney. I do not recollect.

Mr. Folk. You do not recall any?

Mr. McKinney. No.

Mr. Folk. And you were a member of the senate altogether how many years?

Mr. McKinney. I was not taking very much interest in those bills. The fact is we were torn to pieces over other matters.

Mr. Folk. How did you vote on the fellow-servant bill?

Mr. McKinney. I don't remember ever voting on it at all.

Mr. Folk. Did you act on it in committee?

Mr. McKinney. No, sir.

Mr. Folk. The headlight bill?

Mr. McKinney. I think we acted on the headlight bill.

Mr. Folk. You voted against that?

Mr. McKinney. Yes, sir. I just simply didn't know——

Mr. Folk. Do you know Mr. Hudson?

Mr. McKinney. Yes, sir.

Mr. Folk. See him often over there at the capitol?

Mr. McKinney. Quite often.

Mr. Folk. Every week or so he would come over, would he?

Mr. McKinney. Oh, he would be over almost every day.

Mr. Folk. Every day?

Mr. McKinney. Yes, sir.

Mr. Folk. How long would he stay when he would come?

Mr. McKinney. Well, he would just drop in off and on, I could not say.

Mr. Folk. Did he stay as long as you did?

Mr. McKinney. Oh, I stayed all day.

Mr. Folk. Did he stay all day, too?

Mr. McKinney. And he would be in and out. I was not watching him and couldn't say exactly how long he would stay.

Mr. Folk. Would you see him every day?

Mr. McKinney. I think so; practically every day.

Mr. Folk. Do you know Mr. McConnell?

Mr. McKinney. Yes, sir.

Mr. Folk. Did you see him every day?

Mr. McKinney. Yes, sir; I would see him most every day. I do not think I would see Mr. McConnell quite as often as Mr. Hudson.

Mr. Folk. Would Mr. McConnell or Mr. Hudson go together or separate and come one at a time?

Mr. McKinney. Sometimes they would be separated and sometimes be together.

Mr. Folk. Sometimes they would come en masse and sometimes come individually?

Mr. McKinney. This was such an everyday business we did not pay much attention to it.

Mr. Folk. What was just an everyday business?

Mr. McKinney. Seeing these gentlemen pass about. There might have been some days they were not there.

Mr. Folk. It was just like seeing a fellow member of the legislature, was it not?

Mr. McKinney. Yes, sir; almost. I believe they called them members of the third house.

Mr. Folk. You called them members of the third house?

Mr. McKinney. Yes.

Mr. Folk. Did they go in committee rooms, too?

Mr. McKinney. I do not remember of seeing them in committee rooms.

Mr. Folk. Did these gentlemen represent the public?

Mr. McKinney. I suppose they were representing the railroads.

Mr. Folk. In fact, you knew they were representing the railroads, did you not?

Mr. McKinney. Yes, sir.

Mr. Folk. Do you know whether or not the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway have been active in politics in this State during the past few years?

Mr. McKinney. No, sir; I could not say that I know.

Mr. Folk. Do you not know anything about it?

Mr. McKinney. I have made two campaigns myself, and they took no part in mine that I know anything about.

Mr. Folk. Did you ever hear of either railroad being interested for or against any candidate in any way?

Mr. McKinney. Well, you see that in the newspapers sometimes, that they were. We have had a great deal of politics in Tennessee in the last few years, and nearly everybody is engaged in politics.

Mr. Folk. Nearly everybody, including the railroads?

Mr. McKinney. I don't know; that is just rumor. I don't know anything certain. They took no part in my campaigns.

Mr. Folk. Speaking of Mr. Hudson and Mr. McConnell, they would see different members of the legislature each day, according to your observation, would they not?

Mr. McKinney. Why, I would see them chatting with members very often.

Mr. Folk. And they appeared to cultivate the friendship of all the members without partiality?

Mr. McKinney. It seemed so; yes, sir.

Mr. Folk. They were what you would term lobbyists, weren't they?

Mr. McKinney. Well, I don't know, they were kind of termed lobbyists; I don't know really what the term lobbyist—it can be used different ways, I guess, but they were considered railroad lobbyists, of course.

Mr. Folk. When you wanted a pass, did you know where to go to get it?

Mr. McKinney. Yes, sir.

Mr. Folk. Where would you go? To Mr. Hudson?

Mr. McKinney. Sometimes to Mr. Hudson and sometimes to Mr. McConnell and sometimes just send a list down to the office.

Mr. Folk. Their distribution of these passes to the members was a form of lobbying that they employed, was it?

Mr. McKinney. Well, I don't know about that. It was just an old custom which seemed to come perfectly natural.

Mr. Folk. Would they get over to the capitol about as early as you?

Mr. McKinney. No; they didn't go over as early.

Mr. Folk. What time did they arrive?

Mr. McKinney. My recollection is that they came generally later in the day.

Mr. Folk. And after you had finished with your mail, then Mr. McConnell and Mr. Hudson would appear, would they?

Mr. McKinney. Oh, no, sir; no special rule about that.

Mr. Folk. That is all.

Cross-examination:

Mr. Waller. Senator, you spoke of the third house. There were quite a number of people who were interested in one piece of legislation or another that stayed at the capitol when those matters were before the senate or the house, were there not?

Mr. McKinney. Yes, sir; quite a lot.

Mr. Waller. Did not the Nashville Street Railway & Light Co. have a representative there to see as to legislation that might affect it?

Mr. McKinney. Yes, sir; I understood they did.

Mr. Waller. And the Memphis Street Railway?

Mr. McKinney. Well, I don't know about that. I was not personally acquainted with either of those gentlemen.

Mr. Waller. Well, Mayor Crump, of Memphis; was he present most of the time?

Mr. McKinney. Yes, sir; almost all the time.

Mr. Waller. Did you know of any public officials that were interested in legislation before the legislature in 1913?

Mr. McKINNEY. Yes, sir: quite a lot, quite a number; and quite a number of school people were there, nearly always.

Mr. WALLER. Were your United States Senators interested in legislation, and did they come from Washington here to look about and see what was going on?

Mr. McKINNEY. Well, I think they came here. I do not know personally what they came for, but it was rumored and talked that they were here for that purpose.

Mr. WALLER. Where would they go? Did you ever see them about the capitol?

Mr. McKINNEY. I have seen them there; yes, sir.

Mr. WALLER. During the legislature?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. There were great political measures up before the legislature in 1913, were there not?

Mr. McKINNEY. Yes, sir; a great many, and a great interest all over the State.

Mr. WALLER. Senator McKinney, you were asked about these railroads being active in politics, and you said that you knew nothing about that except what newspaper you saw it in. What newspaper did you see it in, where they were active?

Mr. McKINNEY. Well, I think I saw it in the Tennessean.

Mr. WALLER. Did you ever see it in any other newspapers?

Mr. McKINNEY. I do not remember to have seen it in an other paper.

Mr. WALLER. That is all you know about them being active in politics, is what you might see about it in that paper, is not that true?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. They never took any part in races in your county, did they?

Mr. McKINNEY. None whatever, that I knew anything about.

Mr. WALLER. And on questions involved in politics in those years you knew that some railroad men were on one side and some were on the other, were they not?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. Those men connected with railroad companies disagreed as to policies just like other people did, did they not?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. Now, you were asked if Mr. McConnell and Mr. Hudson did not sometimes go together. Any two persons go together. I mean two persons that know each other very often go together, do they not?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. It is not unusual to see two men together, is it?

Mr. McKINNEY. No, sir; not very unusual.

Mr. WALLER. Now, in regard to these passes which you procured for your constituents; they would write to you asking you to get them transportation, saying they wanted to come to Nashville, I believe; most of them were to Nashville, were they not?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. How many of those do you suppose—what is your estimate of the number of those who would have come to Nashville during those periods except for that transportation?

Mr. McKINNEY. Well, sir, I do not believe 1 per cent of the country people would come. There might have been 5 per cent, possibly, of the people in the little towns.

Mr. WALLER. In other words, it was just an opportunity which they saw to make a trip without paying railroad fare, and they would make it, having no business here, but coming perhaps to see the town or to be here while the legislature was in session?

Mr. McKINNEY. Yes, sir; they would want to see the capitol.

Mr. WALLER. And so far as the revenue which the railroads lost, you would think it would be, of those country people that came, about 1 per cent, and of the others about 5 per cent?

Mr. McKINNEY. Yes, sir.

Mr. WALLER. So the amount of this transportation which Gov. Folk has called to your attention is no indication at all that that was worth that much to anybody, is it?

Mr. McKINNEY. I should think not.

Mr. WALLER. The railroads did not lose it and nobody got it?

Mr. McKINNEY. That is very plain, because they did not come this last time.

Redirect examination:

Mr. FOLK. You say they did not come this last time. What do you mean by that?

Mr. McKINNEY. The last session.

Mr. FOLK. They could not get passes the last session?

Mr. McKINNEY. I think not.

Mr. FOLK. Who was senator then?

Mr. McKINNEY. Mr. Joseph McCall.

Mr. FOLK. You say you did not get any passes?

Mr. McKINNEY. That is as I understand it. I just wish to say in the immediate section a man lives in, of course, he gets more passes for that section. Mr. McCall lived away over in the eastern part of the county, and had nothing to do with these people we sent passes to. He may have sent quite a lot up there.

Mr. FOLK. Senator, do you understand why it was when you wanted a pass you had to go to this legislative agent to get it instead of going to the superintendent of the railroad or the station agent?

Mr. McKINNEY. Well, I suppose the railroads had some certain man for everything connected with them.

Mr. FOLK. The purpose to issue passes carried with it political power, did it not?

Mr. McKINNEY. Power to issue passes?

Mr. FOLK. Power to grant passes carried with it political power?

Mr. McKINNEY. Well, it might.

Mr. FOLK. Just as the power to grant any kind of favors carries with it political power?

Mr. McKINNEY. I suppose so, to some extent.

Mr. FOLK. By placing this authority to grant passes in the hands of legislative agents, they thereby gave them a political influence which they otherwise would not have had; is not that true?

Mr. McKINNEY. It might be true to some extent.

Mr. FOLK. In other words, if any station agent or any conductor or any superintendent could issue a pass, then the political influence would be so dissipated that it would not be as valuable as if concentrated in the hands of a few men; that is true, is it not?

Mr. McKinney. Well, I do not know about that. Of course that would be—the railroads would not scatter their business or any other business out that way. They have a man for everything.

Mr. Folk. For everything?

Mr. McKinney. It is his department.

Mr. Folk. And the pass departments of the railroads in Tennessee have been through the legislative agents?

Mr. McKinney. Yes, sir; not altogether, but mostly through them.

Mr. Folk. What do you mean by "Not altogether"?

Mr. McKinney. Well, it is possible to write to Judge Waller and get a pass or to Mr. Shearon or some other official. You did not have to write altogether to Mr. McConnell and Mr. Hudson.

Mr. Folk. Did you write to Mr. Peyton, president of the road?

Mr. McKinney. No, sir; I was not personally acquainted with Mr. Peyton.

Mr. Folk. Judge Waller, who is chief counsel, would grant passes sometimes, would he?

Mr. McKinney. He has on occasions; yes, sir.

Mr. Folk. But Mr. McConnell, as a rule, handled that matter, did he not?

Mr. McKinney. Mr. Hudson and Mr. McConnell; yes, sir.

Mr. Waller. I do not want it misunderstood, but Mr. McConnell and Mr. Hudson were in my office, Mr. Folk.

Mr. Folk. Were they?

Mr. Waller. Yes, sir.

Mr. Folk. If you were a member of the legislature now, you say you would vote against the pass system?

Mr. McKinney. No; I don't remember saying that. I said I was undecided.

Mr. Folk. Still undecided?

Mr. McKinney. Yes, sir. The president of the farmers' union lives in my county, and he has talked to me a great deal about this. He says if this was a sweeping antipass bill or law it would retard the agricultural interest of Tennessee 25 years, and I do not think I would be in favor of a sweeping antipass law.

Mr. Folk. So you do not think you would oppose the pass system because you think the pass system is good for agriculture?

Mr. McKinney. I think it is; yes, sir. Personally, if I was coming back to the legislature, I would not want the railroads to grant passes to the members to send out to your constituents, because it is too great a worry on the member; it takes up too much of his time.

Mr. Folk. That is all.

Recross-examination:

Mr. Keeble. Senator, you say a great many passes have been issued to farmers' institutes, and you would not be inclined to abolish them, as far as the institutes are concerned, I believe?

Mr. McKinney. Yes, sir.

Mr. Keeble. Farmers' institutes have been in operation here some few years, have they?

Mr. McKinney. Yes, sir.

Mr. KEEBLE. They have three meetings—one meeting each year. They meet in three grand divisions of the State periodically during the year, do they not?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. There they discuss the methods of farming and treatment of the soil?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. They also discuss the methods of the growth and development of live stock?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. Hogs?

Mr. MCKINNEY. Yes.

Mr. KEEBLE. Cattle and horses and the like?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. And they not only meet there for the exchange of views, but is it not a fact that the agricultural department of the University of Tennessee has cooperated in these institutes with the agricultural department of the State in holding them?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. And they carry their experts from Knoxville to all of these meetings for the purpose of delivering lectures and giving expositions of methods of treatment?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. Is it not a fact, too, Senator, that, in pursuance of that same thing, the superintendent of agriculture of the State has more than once, or at least once or twice, gotten together exhibitions in regard to farming, live-stock raising, and carried it from county to county through the State?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. And assembled the citizens and farmers of the various counties there for the purpose of seeing these demonstrations?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. And hearing these lectures on these questions?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. So that you feel that the good outweighs the bad, as far as that is concerned?

Mr. MCKINNEY. Yes, sir; I do, because the——

Mr. KEEBLE. I will ask you if you do not know it to be a fact that, take the health department of the State, in which they have been conducting systematic campaigns for the prevention and eradication of disease, if there has not been a good deal of advancement made about that in late years in Tennessee?

Mr. MCKINNEY. Yes; great advances.

Mr. KEEBLE. They have a number of inspectors and health officials that carry on the work of the State in that direction by the use of transportation, do they not?

Mr. MCKINNEY. Yes, sir.

Mr. KEEBLE. Also, the mining department does the same thing, does it not?

Mr. MCKINNEY. Well, I do not know that to be a fact, but I——

Mr. KEEBLE. But you know that about the health department?

Mr. MCKINNEY. Oh, I think so.

Mr. **Keeble.** I ask you also, if there has not been a considerable development in the various boards, conferences, and meetings under the State board of education in the last 10 years?

Mr. **McKinney.** Yes, sir; in the last seven years, properly speaking.

Mr. **Keeble.** Yes; in fact practically all the modern methods of conferring and going out to the people by the agencies of the State in these conferences have been inaugurated in the last seven or eight years?

Mr. **McKinney.** Yes, sir.

Mr. **Keeble.** Now, would you think in considering the question of harmfulness of issuing passes there would be anything wrong for the railroads thus cooperating in the development of the State, to provide the means of successfully holding these conferences, and carrying that element of the estate out to the people?

Mr. **McKinney.** No, sir; I do not think there would be anything wrong.

Mr. **Keeble.** You think that would be one of the things that perhaps might be considered?

Mr. **McKinney.** Yes, sir.

Mr. **Keeble.** In other words, I gather from what your idea is that you know that in a great many of the vital departments of the State the railroads have cooperated in the way of free transportation in order to make successful these vital departments?

Mr. **McKinney.** Yes, sir.

Mr. **Keeble.** And do you think it is anything immoral or wrong if a railroad company in a State is interested, even selfishly, from the increase in business in the development of the agricultural sections of the State, mining interests or sections of the State, or educational institutions of the State, the health organization of the State, as any other citizen, there is anything immoral or wrong with the railroad company cooperating with the people as a whole in the development of the State in those particulars?

Mr. **McKinney.** I think the railroad ought to do it.

Mr. **Keeble.** And do you think there is anything particularly wrong in the fact that the railroad has thus cooperated with the State and these great enterprises for a period of years and the people have begun to feel a kindly interest in the railroad as the result of that—do you think that is anything wrong?

Mr. **McKinney.** I could not see that it would be.

Mr. **Keeble.** In other words, the only thing you feel about it is that there are certain lines of legislative classes that it would be well enough to prohibit?

Mr. **McKinney.** Yes; I think so.

Mr. **Keeble.** And the main question about that, in your mind, is the harassment and annoyance it gives the member himself?

Mr. **McKinney.** It spreads so fast among the people, you see; they get the habit and want passes, and want them bad; and they worry the member until he can not attend to his duties.

Mr. **Keeble.** As the result of all these cooperations between these various departments of the State I have spoken of and of the railroads in the State for the past seven years, I will ask you if it is not a fact that the people of the State and the railroads of the State have gotten to a better understanding and a kindlier feeling than they have had for many years?

Mr. McKINNEY. I think so; yes.

Mr. KEEBLE. And it has gotten pretty hard for any man to simply go out in a broad crusade against a railroad with blanket charges and get anything politically on that account. Is not that true?

Mr. McKINNEY. Yes; he can not do it.

Mr. KEEBLE. And political events have demonstrated that more than once; I ask you if that is not true?

Mr. McKINNEY. Yes.

Mr. KEEBLE. I will ask you if it is not your opinion, as having been in public life a long time, that the strongest asset before the people of the State that the railroads have is this kindly feeling that has come through this cooperation which we have just described?

Mr. McKINNEY. I think so.

Mr. KEEBLE. That will do.

Mr. FOLK. You say that no man in Tennessee can fight the railroads and get anywhere in politics?

Mr. KEEBLE. No; he did not say that, Mr. Folk.

Mr. FOLK. Let the witness answer.

Mr. KEEBLE. Well, I object to that characterization of his answer.

Mr. FOLK. Can you name any man in politics in Tennessee who has fought the railroads and who has succeeded in being elected over the opposition of railroads?

Mr. McKINNEY. Well, I don't know about that; but I was just going, on the other hand, about the friendliness of the people—my own people; those are the only ones I know anything about.

Mr. FOLK. You can not think of a single man in this State who has fought the railroads and who has succeeded in politics over the opposition of the railroads, can you?

Mr. McKINNEY. Well, I do not know just who the railroads have been fighting.

Mr. FOLK. I will ask you whether at this time you can recollect the name of a single man who has fought the railroads who has succeeded in politics over the opposition of the railroads? You can answer that yes or no.

Mr. McKINNEY. No, sir; I do not think I can.

Mr. FOLK. The first question I understood Mr. Keeble to ask you, in effect, was whether or not any man in this State who fights the railroads can succeed politically.

Mr. KEEBLE. I want to say——

Mr. FOLK. I am asking him.

Chairman MEYER. Let us not have a speech on that.

Mr. KEEBLE. I want it to be understood I asked no such question, and I have no such idea. I asked him the question if he thought that by virtue of this friendly relation any man in Tennessee could just make a blanket war on railroads, and one without ground or basis; that is what I meant.

Mr. FOLK. All right, assuming such are the relations in this State between the voters and the railroads, that no man can make a blanket war on the railroads in this State and hope to succeed in politics.

Mr. McKINNEY. I believe a large majority of the people in this State are friendly to the railroads.

Mr. FOLK. Were you as a legislator friendly to the railroads?

Mr. McKINNEY. Yes, sir; I came here that way.

Mr. **Folk.** You do not object to being classified as a senator who was friendly to railroads?

Mr. **McKinney.** Well, you may have some hidden meaning in that, but I am friendly to the railroads and do not object to being so classified.

Mr. **Folk.** I have no other hidden meaning than is conveyed by the use of the words, friendly to the railroads.

Mr. **McKinney.** We want some more railroads over in my county. We have no railroads in my county; we have two branches in the county, and we get along so well with them that we want more; we want them there.

Mr. **Folk.** You think all farmers ought to be carried free?

Mr. **McKinney.** No; I do not think all the farmers. I mean just delegates to these meetings. They are doing a wonderful work, a wonderful work in improving the farms, cattle, and stock.

Mr. **Folk.** That is, they should be carried to these farmers' institutes free?

Mr. **McKinney.** Yes, sir.

Mr. **Folk.** And you think all miners should be carried to the mines free?

Mr. **McKinney.** I did not say anything about the miners. I am a farmer.

Mr. **Folk.** How about the bankers—ought they to be carried to their conventions free?

Mr. **McKinney.** I am not saying anything about them.

Mr. **Folk.** How about the merchants—ought they to be carried to their conventions free?

Mr. **McKinney.** The farmers are what I am talking about.

Mr. **Folk.** How about the lawyers?

Mr. **McKinney.** Those men are able to look after themselves.

Mr. **Folk.** Well, suppose they were all carried free, then where would the railroads get any revenue?

Mr. **McKinney.** That would not be such an amount after all, if you could add to the material wealth of the State millions of dollars; there would not be anything lost.

Mr. **Folk.** You think, then, it would be a good idea for the railroads to carry everybody free and develop the State?

Mr. **McKinney.** Just certain ones; not everybody, but just these delegates.

Mr. **Folk.** Just carry some favored ones free?

Mr. **McKinney.** They elect people to represent them in these meetings, and not carry everybody.

Mr. **Folk.** Are you familiar with the agricultural institutes of Wisconsin, Missouri, and Iowa?

Mr. **McKinney.** No, sir.

Mr. **Folk.** Where they do not use railroad passes at all?

Mr. **McKinney.** No, sir.

Mr. **Folk.** Do you know that in the last few years, and without the use of railroad passes, they have developed far more than they have in this State, with the use of railroad passes?

Mr. **McKinney.** But they used to use them, did they not?

Mr. **Folk.** No, sir; not for 15 years.

Mr. **McKinney.** Well, they are 25 years ahead of us, anyway.

Mr. FOLK. Well, so you think they are ahead because they do not permit the use of free transportation?

Mr. McKINNEY. No, sir; I think they got a good start when they were using them. Now, Governor, this Mr. Rhode, the president of the farmers' union, has done a great work in Tennessee, and he tells me the farmers' union would have died; they did not have money in the treasury to carry their organizers over the State. I am honest in this; I believe in it.

Mr. FOLK. That is all.

Mr. KEEBLE. Wait a minute, Senator. There seems to have been some misapprehension in the mind of Gov. Folk as to the question and answer we had about the situation in the State, and I want to ask you a few questions to clear that up. Particularly I will ask you if Gov. Folk correctly understands you in testifying that you think all farmers ought to ride free all the time?

Mr. McKINNEY. No, sir; I did not say that at all.

Mr. KEEBLE. You never made any such statement as that, did you, Senator?

Mr. McKINNEY. No, sir; and did not intend to.

Mr. KEEBLE. So, if he understood you were recommending the free permission to all farmers to travel all over the State whenever they wanted to do it, you did not make any such statement as that?

Mr. McKINNEY. No, sir.

Mr. KEEBLE. And neither would you be construed as saying you wanted all teachers and all educational people to ride all the time free?

Mr. McKINNEY. No.

Mr. KEEBLE. Or all persons engaged in mining development; is that correct?

Mr. McKINNEY. Yes.

Mr. KEEBLE. As I understood you, this is what you mean to say—that you think it is to the interest of the State and to the interest of of the railroad to provide a system of carrying delegates to these farmers' institutes that are held periodically in the State?

Mr. McKINNEY. Yes, sir.

Mr. KEEBLE. And that is what you mean to confine the farmers' transportation to?

Mr. McKINNEY. Yes.

Mr. KEEBLE. When the farmer rides otherwise, then he pays his fare just like a lawyer or a merchant; that is what you mean, is it not?

Mr. McKINNEY. Yes; and he will be able to pay if we keep on with this farm movement for a few years.

Mr. KEEBLE. And you apply that same principle to educational meetings; that is to say, free transportation to periodical gatherings where the public benefit is supposed to radiate among the masses of the people; that is what you mean?

Mr. McKINNEY. Yes, sir.

Mr. KEEBLE. And if you were misunderstood, you now clear that up?

Mr. McKINNEY. Yes, sir.

Mr. KEEBLE. Now, then, I did not understand you to say—and I want to be straight about that because I live in Tennessee—you do not mean to be understood as saying that no campaign and no man could make a campaign on a real issue against a railroad and not succeed, do you?

Mr. McKINNEY. No, sir; I do not mean that at all. If he had a just fight against the railroad—but the people of Tennessee, I claim, are friendly to the railroads, so far as I know. There may be sections of Tennessee that are not, you know.

Mr. KEEBLE. I understand. I am merely asking your judgment. What you intended to say, then, was this: That there is such a feeling of cordiality among the people and the railroads, growing out of these developments largely, that the people would not elect a man to office who was merely making a railroad issue without something behind it?

Mr. McKINNEY. Yes, sir.

Mr. KEEBLE. Except politics; that is what you meant?

Mr. McKINNEY. Yes, sir.

Mr. KEEBLE. In other words, if a man started out to-morrow, and he had a definite measure that the railroads probably would oppose that appealed to the judgment and right thinking of the people, he would not have any more difficulty than he would on any other campaign, would he?

Mr. McKINNEY. No, sir; he would not.

Mr. KEEBLE. In other words, they are tired of railroad baiting; is that it?

Mr. McKINNEY. Quite a number of people spoke to me when I first came to the legislature, and told me, and said: "Don't go up and try to tear the railroads all to pieces, like they did in Alabama after they passed the prohibition law." I was a prohibitionist. That is the main thing I came here for.

Mr. FOLK. You say that such are the cordial relations between the people of this State growing out of these circumstances that the people are very friendly to the railroads?

Mr. McKINNEY. I say my people. I can not say for the rest of the State. I say for Carroll and Henry Counties and Gibson. I am well acquainted in those three counties and mix and mingle with them all the time.

Mr. FOLK. And those cordial relations are brought about to a considerable degree by the policy of issuing free passes to farmers and farmers' institutes and matters of that character?

Mr. McKINNEY. I think that goes a great way; yes, sir.

Mr. FOLK. So, then, by giving farmers free passes to institutes the railroads have made it difficult for any man, or impossible, according to your statement, for any man to fight the railroads and hope to be elected in this State?

Mr. McKINNEY. Well, if the railroads are friendly, if you put it that way, that is the way it is.

Mr. FOLK. The railroads have gotten the friendship of a very large number of people in this State by giving them free passes to institutes and things of that nature. That is true, is it not?

Mr. McKINNEY. To some extent, like all——

Mr. FOLK. Suppose one were to run for a State office on the platform of opposition to railroad domination in politics in this State and on a platform declaring for the fellow-servant law and a platform opposing the issuance of any free passes, do you think he would get anywhere, in view of the friendship of the people for the railroads, in the issuance of free passes? He would have a difficult time, would he not?

Mr. McKinney. I do not know the reason, but I do not think he would be elected.

Mr. Folk. That is all.

Mr. Keeble. Mr. Folk has asked you if a man ran for office in Tennessee on a platform to prohibit the issuance of free passes and pass the fellow-servant bill and what other bill?

Mr. Folk. And against the domination of railroads in politics.

Mr. Keeble. I do not think there has been any issue of that kind, but take the other two. I will ask you if Gov. Rye and Gov. Hooper were elected, and Gov. Hooper twice and Gov. Rye once, on platforms of that kind and against free passes?

Mr. McKinney. Yes, sir.

Mr. Keeble. And in favor of a workman's compensation act and fellow-servant bill and a headlight bill?

Mr. McKinney. Yes, sir.

Mr. Keeble. And they were both running on the same platform—they have run on those platforms for two or three times, have they not?

Mr. McKinney. Yes, sir.

Mr. Keeble. And were they or not elected?

Mr. McKinney. They were elected.

Mr. Keeble. Has anybody run for an office in the State of Tennessee, any State office, where the State of Tennessee affairs were going to be passed upon, upon any platform that had any other railroad issues in it, one way or the other, in your recollection?

Mr. McKinney. How is that?

Mr. Keeble. Have there been any other railroad issues—in other words, all these railroad issues that have been talked about, is it not a fact that the only issues that have been up before the legislature in your knowledge are the same issues; that is, there has been a pass law and a fellow-servant law and workman's compensation and headlight bill, and perhaps one or two other measures that did not go as far into consideration—those are all that there have been up, are they not?

Mr. McKinney. All I remember of; yes, sir.

Mr. Keeble. And those were in these platforms?

Mr. McKinney. Yes, sir.

Mr. Keeble. And these men were elected on those platforms?

Mr. McKinney. Yes, sir.

Mr. Keeble. And some when they got there voted for them and some did not; that is true, is it not?

Mr. McKinney. Yes, sir.

Mr. Keeble. Then there were a large group of the members of the legislature in these times that were there that did not represent any particular party?

Mr. McKinney. Yes, sir.

Mr. Keeble. They came independent?

Mr. McKinney. Yes, sir.

Mr. Keeble. And they voted as they pleased, without any platform obligation?

Mr. McKinney. Yes, sir.

Mr. KEEBLE. So that it is not a fact that a man can not be elected to office in Tennessee embracing in his platform the very things and the only things that have been mentioned in this discussion?

Mr. McKINNEY. Oh, people do not regard these platforms very seriously, it seems like, nowadays.

Mr. KEEBLE. Well, there has been no fight made on anybody on account of his attitude on that ground, has there, that you know of?

Mr. McKINNEY. No, sir; not that I know of.

Mr. KEEBLE. In so far as the question of the domination of politics, has there ever been a State campaign, any platform of a party in which that has been a serious issue since you have been in public life?

Mr. McKINNEY. Not that I remember of; no.

Mr. KEEBLE. Do you know of any effort on the part of any railroad in the State to dominate the politics of the State?

Mr. McKINNEY. No, sir; not to my knowledge.

Mr. KEEBLE. Do you believe it exists?

Mr. McKINNEY. No, sir; I do not think it does. If it does, I do not know it.

Chairman MEYER. Well, are we through now?

Mr. FOLK. Pardon me just a moment.

Chairman MEYER. If you have any more questions you may ask them, but I think the record will show this man's views pretty well.

Mr. McKINNEY. I think so.

Mr. FOLK. Mr. Keeble asked you if Gov. Rye and Gov. Hooper were not elected on platforms declaring against the free-pass and for the fellow-servant law. Both platforms declared against free passes and for the fellow-servant law, did they not? So those questions were not issues before the people, since both candidates purported to be for the same thing. Now, the Democratic platform declared against the free pass, did it not?

Mr. McKINNEY. Yes, sir.

Mr. FOLK. The Republican platform declared against the free pass, did it not?

Mr. McKINNEY. Yes, sir.

Mr. FOLK. The independent platform declared in favor of a free-pass law; that is, a law prohibiting free passes?

Mr. McKINNEY. I just don't remember about that. I was running on my own platform. I did not have that in my platform.

Mr. FOLK. Now, although the Democratic platform declared in favor of a law against free passes, and the Republican platform declared in favor of a law against free passes, the railroads opposed such a law, did they not?

Mr. McKINNEY. I do not know whether they did or not. They never did to me, or say anything about it.

Mr. FOLK. Did they favor it?

Mr. McKINNEY. I think they were neutral on that question.

Mr. FOLK. Did you know that Mr. Hudson was against it?

Mr. McKINNEY. No; I did not.

Mr. FOLK. Take the fellow-servant law, both platforms declared for that law?

Mr. McKINNEY. Yes, sir.

Mr. **Folk**. And the Democratic platform declared in favor of the fellow-servant law?

Mr. **McKinney**. Yes, sir.

Mr. **Folk**. The Republican platform declared in favor of the fellow-servant law?

Mr. **McKinney**. Yes, sir.

Mr. **Folk**. The railroads opposed the fellow-servant law, did they not?

Mr. **McKinney**. I think they did; yes, sir.

Mr. **Folk**. Which prevailed, the railroads over the platform of the Democratic Party and over the platform of the Republican Party? They were mighter than both political organizations, were they not, according to results?

Mr. **McKinney**. There were a lot of people besides the railroads opposed to it.

Mr. **Folk**. I know; but the railroads opposed these measures and the Democratic Party declared in favor of them and the Republican Party declared in favor of them, and the views of the railroads prevailed.

Mr. **McKinney**. I was opposed to it. I own a sawmill.

Mr. **Folk**. What sort of a platform were you elected on?

Mr. **McKinney**. Mostly prohibition.

Mr. **Folk**. Independent?

Mr. **McKinney**. Yes.

Mr. **Folk**. Neither Democratic nor Republican?

Mr. **McKinney**. No.

Mr. **Folk**. It did not say anything about railroad questions at all?

Mr. **McKinney**. No.

Mr. **Waller**. It is true as to the fellow-servant bill that the manufacturers of this State were organized to fight that bill and did fight it?

Mr. **McKinney**. Yes, sir; that is my understanding.

Mr. **Waller**. And that manufacturers' association included all sorts of industrial enterprises in this State?

Mr. **McKinney**. That is my understanding; yes, sir.

Mr. **Waller**. Including your sawmill?

Mr. **McKinney**. Yes, sir.

(Witness excused.)

Will H. Carleton was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. **Folk**. Your name is——

Mr. **Carleton**. Will H. Carleton.

Mr. **Folk**. Where do you live?

Mr. **Carleton**. St. Paul, Minn.

Mr. **Folk**. What is your occupation?

Mr. **Carleton**. Examiner of the Interstate Commerce Commission.

Mr. **Folk**. How long have you held the position of examiner of the Interstate Commerce Commission?

Mr. **Carleton**. Since May 10, 1909.

Mr. **Folk**. Have you made an examination of the books and records of the Louisville & Nashville Railroad and of the Na hville, Chattanooga & St. Louis Railway?

Mr. CARLETON. Yes, sir.

Mr. FOLK. You have examined the books and papers, records and memoranda, of those two carriers with reference to the issuance of free passes during the year 1913?

Mr. CARLETON. Yes, sir. I would qualify that to the extent that the Nashville, Chattanooga & St. Louis Railway was not under my immediate supervision and direction.

Mr. FOLK. I will ask you whether or not you have a schedule showing the officials of Kentucky and Tennessee who received annual and trip passes over those two carriers for the year 1913?

Mr. CARLETON. I have, of the State of Tennessee.

Mr. FOLK. Tennessee?

Mr. CARLETON. Yes: Tennessee.

Mr. FOLK. And not Kentucky.

Mr. CARLETON. I have a schedule, not combined, but I have the information for Kentucky.

Mr. FOLK. Have you, in instances where a large number of trip passes have been issued to legislators or other officials, ascertained from the books whether or not those passes were actually used?

Mr. CARLETON. Yes, sir.

Mr. FOLK. And the mileages, they were used?

Mr. CARLETON. Yes, sir.

Mr. FOLK. And the value of the passes represented by the mileage?

Mr. CARLETON. Yes, sir.

Mr. FOLK. Will you please take your schedule, and, wherever an official received, during the year 1913, 100 trip passes or more, so indicate and give the value of the mileage used.

Mr. CARLETON. This is covering both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

Mr. FOLK. Yes.

Mr. CARLETON. The list shows that Mr. W. K. Abernathy——

Mr. FOLK. What is he?

Mr. CARLETON. A State representative of Tennessee received one annual pass and 193 trip passes, on which—this is received at his request—on which were traveled 84,429 miles, of a valuation of $2,508.79.

Mr. A. J. Argo, State representative, received from both carriers 4 annual term passes and 276 trip passes.

Mr. FOLK. This is for one year, 1913?

Mr. CARLETON. This represents the one year ending December 31, 1913. The mileage traveled on those passes was 98,991 miles, a valuation of $2,969.24.

Mr. KEEBLE. To save cross-examination, Gov. Folk, I suggest the witness state the mileage separately—how much for the Louisville & Nashville and how much for the Nashville, Chattanooga & St. Louis.

Mr. FOLK. Separate the mileage, if you can.

Mr. KEEBLE. I would like to ask one other question. Upon what basis does he figure that value?

Mr. CARLETON. The value of the trip passes is based on the tariff rates as shown in the tariffs of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, covering the passage from and to the points as named in the pass.

The annual pass is based on a rate of 3 cents per mile in Tennessee, which, during the year 1913, was the regular State fare rate, 3 cents a mile, based on the mileage as shown. Of course, we took the total miles traveled on a trip pass during the year and computed that at 3 cents.

Mr. FOLK. You computed it in accordance to what any one else would have to pay for that transportation?

Mr. CARLETON. Absolutely.

Mr. JOUETT. Will you separate those first two, before we go any further?

Mr. CARLETON. I have these combined. The Louisville & Nashville, I will have to make computations here on that.

Chairman MEYER. Mr. Jouett, if those computations have not been made, will it be satisfactory to have Mr. Carleton make them and file them afterwards?

Mr. JOUETT. Yes.

Mr. CARLETON. If you will, because I could only make them approximately now.

Mr. FOLK. Proceed.

Mr. JOUETT. How long will it take to make them as you go along? We will never get back to it.

Mr. FOLK. He could make it during the noon recess and give it this afternoon.

Mr. CARLETON. I could do that.

Mr. JOUETT. Could you not go to something else while he does that?

Mr. CARLETON. I could have my assistants work on this.

Mr. JOUETT. Is there not anything else you could examine about until we get that separation? There is a reason why we would like to have that record made as it goes, and it is of no value at the present time. He could work that out at noon.

Mr. FOLK. All right; we will take up the letters. I will ask you whether or not you examined the letter files of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, with reference to the issuance of passes?

Mr. CARLETON. Yes, sir.

Mr. FOLK. Did you make and have made copies of letters in the files of these carriers in reference to the issuance of free transportation?

Mr. CARLETON. Certain letters; yes, sir.

Mr. FOLK. I will ask you whether or not you found letters indicating that passes were being requested to influence judges of courts?

Mr. CARLETON. Yes, sir.

Mr. FOLK. Indicate the letter or letters.

Mr. CARLETON. I have one from J. W. Henson.

Mr. FOLK. Where is the letter?

Mr. CARLETON. Shall I read the letter? It says:

[The Henderson Gleaner, incorporated, daily and twice a week. Gleaner ads bring results.]

HENDERSON, KY., *April 24, 1913.*

Mr. L. W. MAPOTHER,
First Vice President L. & N., Louisville, Ky.

DEAR SIR: If not inconsistent with your rules, would be pleased to have you furnish us trip pass, Louisville to Covington and return, in favor of Judge J. W. Henson. Good for 30 days. As judge would like to make use of pass Sunday, will appreciate your usual prompt attention.

We believe you are fully cognizant of the judge's relations to the Gleaner.

Very truly,

THE GLEANER CO.,
By G. D. GIVENS.

Another one, the heading is:

[C. W. Metcalf, James H. Jeffries. Metcalf & Jeffries, attorneys at law.]

PINEVILLE, KY., *February 18, 1913.*

MY DEAR MR. WARFIED: W. H. Ingram has asked me for transportation for his wife and daughter Annie to Louisville. He is the judge of the Pineville city court and has decided practically every case in our favor that has come before him, and we have a great many small ones. Besides, he is one of the Bell County jury commissioners, and I think perhaps I will be in position by getting this favor for him to get a better class of jurors.

Yours, very truly,

C. W. METCALF.

Mr. FOLK. Was the pass issued?

Mr. CARLETON. The pass was issued February 19, 1913, No. 12012.

This first is an extract from a letter that we took from Joseph F. Bosworth to R. E. Fleming, dated Middlesborough, Ky., April 10, 1911:

I am going to get you to favor me by sending a thousand-mile book to Mr. F. D. Sampson, who has just been nominated for circuit judge in the Whitley-Knox circuit court district. Please do this at once and I will be under many obligations to you.

Here is a Louisville & Nashville Railroad Co. letterhead, April 13, 1911:

Mr. WARFIELD: I met Sen. Joe F. Bosworth last evening at the Union Station on the arrival of train 15, and he tells me that he is satisfied Mr. Sampson will do the right thing by us and that he will guarantee him to be always fair and square with us. He stated further that all of the railroad people were for Judge Black, and that Sampson said there was nothing else for him to do except to take the other end of the proposition and attack the railroad; that the only object in taking this course was for the votes that it would make him; and that Mr. Sampson is a corporation man, owning and being interested in several coal mines, and that his leanings are all toward corporate interests.

He further stated that he expects very shortly to bring Mr. Sampson to Louisville with him, and will bring him around and introduce him.

[Typewritten.] R. E. F.

There is another——

Mr. FOLK. R. E. Fleming?

Mr. CARLETON. There is another——

Mr. JOUETT. We only examined that very small volume of letters this morning, and we would rather examine any letter that is asked about and see how it checks up with the original. But we have not had time to get the originals. We will have to object to this unless we can examine them.

Mr. FOLK. You can look right over here and look at them.

Mr. JOUETT. I do not know as I would know any better by looking at them.

Chairman MEYER. Can we not go on now?

Mr. FOLK. I will state, Mr. Commissioner, that it is the purpose to have only illustrative letters read; for instance, letters illustrating the use of passes to influence judges, to influence jurors, to influence legislators, to influence public officials, to influence newspapers, to influence traffic, to influence public opinion.

Chairman MEYER. You have the letters classified under the heads you have just enumerated?

Mr. FOLK. Yes; and he will read illustrative letters in each class.

Chairman MEYER. You will not attempt to read all the letters under each class, but only illustrative letters?

Mr. Folk. No.

Chairman Meyer. Col. Stone, are you ready to proceed now?

Mr. Stone. Yes, sir; I am, from that book.

Chairman Meyer. Governor, I guess we are ready.

Mr. Folk. Proceed, Mr. Carleton.

Mr. Carleton. Have you the N., C. & St. L.?

Mr. Folk. Do you want to read from that book now?

Mr. Carleton. I will read from this one?

Mr. Folk. Yes; and Judge Waller will have the other finished, then.

Mr. Carleton. A letter from the Gleaner to W. L. Mapother, dated August 17, 1910:

> We would also be pleased to have you issue trip pass from Henderson to Louisville and return, and Versailles and return, to J. W. Henson, on account of Gleaner. Judge Henson is probably personally known to you as judge of the Henderson circuit court. He is also an editorial writer on this paper. In view of this fact I believe it would not be contrary to your policy to charge the transportation to our account. He is going as our guest for a week's stay at Estill.
>
> Yours, truly, The Gleaner Co.

Mr. Jouett. What is the date of that?

Mr. Carleton. August 17, 1910.

Mr. Jouett. I thought the inquiry was confined to 1913.

Mr. Carleton. These letters, though, were indicative, taken from the file, and they pertain to dates prior to that.

Mr. Folk. The letters are not confined to 1913, but the list of passes.

Mr. Jouett. This investigation is confined to 1913, and I make this objection, just as I did yesterday. You have all this information, and the records are all in, but we object to the reading of these letters publicly, with a view, presumably, of reflecting upon them in some way; and, inasmuch as the inquiry is certainly confined to the year 1913, we do not think any other letters are competent for any purpose, Mr. Commissioner. The subpœna duces tecum only called for that, and the senate resolution under which this investigation is being conducted only calls for that year, as I recall it.

Chairman Meyer. Mr. Jouett, I understand you are making this objection for the purpose of the record, and it will be noted and will be considered by the commission. But the investigation itself is not confined to one year.

Mr. Jouett. Our subpœna duces tecum was, as I recall it.

Chairman Meyer. That may be. The governor would know about that.

Mr. Jouett. I am not sure about that, but you see, the object is accomplished which we wish to defeat, for the sake of these people who have corresponded with the railroads bearing upon this question which I spoke of yesterday as having been a universal custom for years. Now, to be exposed in this way, we desire to object to it on that account. So far as the railroad is concerned, we have no objection. I do not believe they ought to go back into those letters beyond 1913.

Mr. Folk. The inquiry is not confined to 1913. It is true the list of passes we have here is for that year and for the years 1914 and 1915; but we have classified these letters to influence judges, witnesses, jurors, and legislators without respect to the years in which the letters were written. Most of them, it will be found, were written in the year 1913, a few of them earlier than that, and some later; some in 1915.

Mr. Jouett. Well, I do not think that our subpœna duces tecum refers or goes back that far—only 1913.

Mr. Folk. If you would like it——

Mr. Jouett. We will object to anything beyond 1913.

Mr. Folk. We will make out a subpœna duces tecum right away. Will you issue one now, Mr. Dougherty, covering those periods?

Mr. Jouett. We will have to look over them.

Mr. Folk. Will you object to these letters being read now?

Mr. Jouett. Yes; anything prior to 1913 they can not read a copy except by our consent. They have to produce some evidence. Now, you summoned us with the letters, and we are ready to produce them, but we are not ready to produce these. We knew nothing of them. The subpœna duces tecum was confined to the year 1913.

Mr. Folk. This is an investigation by the Interstate Commerce Commission, and the records or letters being read are records of the carrier obtained by examiners of the commission for the information of the commission, and ordinary rules of evidence applicable in a court of law with respect to reading copies in the absence of the originals, of course, do not apply in an investigation of this character.

Mr. Jouett. I am astounded to hear counsel say that that rule does not apply. If this commission is sitting as a judicial tribunal of any sort, it is hearing any evidence as competent evidence; it must be competent evidence. Now, to say that a copy may be used when the original is in existence, when there has been no opportunity to get the original and when it can be produced to speak for itself, violates every canon of evidence, and I do not think that the governor really—I can not see how he can hold that position.

Mr. Folk. The Supreme Court of the United States declared, if you will read the Baird case, for instance, that the Interstate Commerce Commission is not governed by the ordinary rules of evidence. It is an administrative body and quasi judicial in its character.

Mr. Jouett. So it is. I do not recall the language to which you refer; but, certainly, if this means anything, if this hearing is to result in anything; if action is to be taken either by the commission or by the Senate or any other body that chooses to do it, it ought not to be upon absolutely incompetent evidence. The whole hearing, the whole proceeding, is void from the beginning if it is going to be thus. If any man may say, "Here is a paper which somebody under me took as a copy from some other paper"—I do not know it, Mr. Carleton has not compared it; but even if he had we do not know whether the original is a genuine letter.

Now every rule of evidence requires that the original should be produced. We are ready to produce the originals. We are making no question about that.

Chairman Meyer. For the present, suppose we proceed and take the letters covered by the subpœna issued against them.

Mr. Jouett. That is all right; we have no objection to that. We have consented to it.

Mr. Colston. And with reference, Mr. Chairman, to the statement of Gov. Folk, that the rules, the formal rules of evidence, do not in every case obtain in proceedings before the commission, it is likewise true that in the case of Louisville & Nashville Railroad *v.* Interstate Commerce Commission, generally known as the New Orleans Board of Trade case, reported in 227 U. S., the Supreme Court of the United States said that while it was true that the formal rules of evidence did not obtain in proceedings before the commission, for that reason there was all the more necessity that the substantial rights of litigants before the commission be respected and upheld.

And, in permitting these letters to be read at all, any letters to be read, it must be borne in mind it is subject to our exception and reservation of exception, and these letters are read over our objection as to the right to read privileged communications, and as to the right to read any correspondence at all, and what has been done here by way of agreement was certainly based upon the subpœna duces tecum issued in this record, which was clearly limited to the year 1913; and, therefore, I think that the substantial rights of litigants or parties to this case demand that the reading of these letters be limited at least to the year 1913.

Mr. JOUETT. The commissioner so decided.

Chairman MEYER. Of course, the issuance of the subpœna for earlier letters is a formality that, if you insist, I think the chief counsel should comply with.

Mr. FOLK. In about 10 minutes we can have an additional subpœna, if you demand it.

Mr. JOUETT. Yes.

Chairman MEYER. Meanwhile, will you please proceed with the letters falling within the scope of the subpœna originally issued?

Mr. FOLK. Proceed.

Mr. CARLETON. That is all we have, to influence judges.

Mr. FOLK. Did you find any letters indicating that passes were being issued to influence witnesses in lawsuits?

Mr. CARLETON. Yes.

Mr. FOLK. Please read any letters that you found.

Mr. CARLETON. There is a letter from Mr. R. Holbrook to Mr. W. L. Mapother, dated February 18, 1913, written from Hartford, Ky.:

> DEAR SIR: Please find inclosed my annual pass, for which I wish to again thank you. If it is not asking too much, I wish to ask you for one again this year. If you can send it to me at once it will save railroad fare to Hardinsburg, as I am summoned there the 21st, in suit Sheeran Bros. *v.* L. & N. R. R. Co.
>
> Our oil field is getting along fine; we hope to be shipping oil over your line this summer.

Mr. JOUETT. I do not understand how that affects a witness.

Mr. FOLK. He was summoned as a witness in the case, and wants a pass.

Mr. KEEBLE. The interstate-commerce law especially provides that you can give that kind of a pass to witnesses.

Mr. FOLK. But he was a witness for the other fellow, possibly.

Chairman MEYER. Is not that a matter of argument?

Mr. JOUETT. But we object to the comment when there is no proof about it. The governor is making those statements.

Mr. CARLETON. It was an annual pass, Gov. Folk.

Mr. FOLK. Turn next to 372B, page 56.

Mr. CARLETON. Letter written by Mr. A. E. Ray to Mr. Frank McConnell, Nashville, Tenn., dated Tullahoma, Tenn., May 6, 1913:

> DEAR SIR AND FRIEND: I am summoned to appear at Manchester on Friday of this week as witness in a case against the company.
>
> You know how I would feel as witness against you people and would rather have business somewhere else, as they will have me go if I remain in town. So I wish you would send me up a pass for self and wife to Nashville, as I think I might have important business at that end of the line just before the case is called.

Mr. FOLK. Was the pass issued?

Mr. CARLETON. Yes.

Mr. WALLER. What is the date of that letter?

Mr. CARLETON. May 6, 1913.

Mr. STONE. To whom was that addressed?

Mr. CARLETON. To Mr. Frank McConnell, Nashville.

Mr. FOLK. 373B, page 67.

Mr. WALLER. By whom was it written?

Mr. CARLETON. Mr. A. E. Ray. This is a letter from Mr. J. W. Logsdon to B. M. Starke, general manager, Louisville, Ky., May 1, 1913, from Evansville, Ind.:

> DEAR SIR: I attach hereto letter of date the 30th ultimo from Trainmaster Wise, relative to transportation in Kentucky for Mr. J. T. Alexander, president of two of the leading banks in Hopkins County, and for a number of years owner of practically all the telephone lines in western Kentucky, a man who has a very extensive acquaintance, very popular wherever he is known, and whose friends are counted largely by his acquaintance.
>
> Mr. Alexander's testimony in the Western Union case at Louisville, I understand, was about the best of what Judge Humphrey was pleased to call the "farming crowd." I believe that Mr. Hop Holman has transportation in Kentucky, and I presume it is largely because he years ago could do a great deal for the company. He has not the influence with the country people, nor as for that the public in general, as a few years ago, therefore can not be of the assistance to us, because of lack of influence, as would Mr. Alexander, who is now and has been for some time in position to do that which Mr. Holman was capable of doing, and I presume did, some years ago.
>
> I believe he is capable of exerting, and will gladly do it at our request or suggestion, influence among the farmers, and it is from these that the jurors are largely drawn, that will be of great assistance in the various courts of the county. He can assist us also with the magistrate and do a great deal of work with minor county officers. By reason of his great acquaintance he can be of very great assistance to our attorneys in Madisonville, in that if unreliable men are used as witnesses he can in a great many cases—in fact, most of them, I believe—give our attorneys the names of reliable witnesses that would in a measure controvert unreliable witnesses, and this could be done in such a way as not to let it be known that Mr. Alexander had anything to do in the way of assistance with our legal department. Our attorneys at Madisonville are popular and have a very large acquaintance, but they have not doubtless the opportunity of knowing as well as does Mr. Alexander the country people.
>
> I used for a number of years two or three such gentlemen on the C. V. division, and by reference to the litigation on the C. V. from 1892 to 1900, as compared with later date, will show I think clearly that it was a good investment. If it can be so arranged I would like to see Mr. Alexander have transportation Henderson, Guthrie, Franklin, Ky., Owensboro, Ky., and Louisville.

Mr. FOLK. Now, did you find any letters indicating the use of passes to influence jurors?

Mr. CARLETON. Yes, sir.

Mr. JOUETT. Are you through with the examination of that letter, Governor?

Mr. FOLK. Yes.

Mr. JOUETT. That is a letter from some one to the authorities. What was done with it? State whether the pass was issued.

Mr. FOLK. The pass was issued, was it?

Mr. CARLETON. Yes.

Mr. FOLK. Now, state what you obtained with reference to the use of passes to influence jurors in cases in which the railroads are parties.

Mr. CARLETON. To influence jurors?

Mr. FOLK. Yes; 373B, 69.

Mr. CARLETON. Letter from Mr. A. T. Siler, of Tye & Siler, Williamsburg, Ky., dated May 23, 1913, addressed to Mr. B. D. Warfield, district attorney, L. & N. Railroad Co., Louisville, Ky.:

> DEAR SIR: You will please be kind enough to return this letter to me or to Mr. Tye with a pass for Dr. E. Foley from Williamsburg to Lexington and return. The L. & N. Railroad Co. has some three or four cases of weighty importance to be tried in the Whitley circuit court during the next 12 days, beginning next Monday. The 30 men from whom the jury will be selected have already been summoned. Among that number is a brother of Dr. E. Foley and also two of his close substantial personal friends, who listen to him and take his advice generally about matters where they are interested. Dr. Foley has requested a pass from Williamsburg to Lexington and return, and with conditions as they now exist and the jury made up as it is I fell like that the request ought to be granted. This does not mean, of course, that other future requests will be made for him or by him, but only this one at this time.

Mr. FOLK. Was the pass issued?

Mr. CARLETON. It was. This was accompanied by another letter of the same date—that is, not accompanied—but another letter of the same date from Mr. Tye to Mr. Warfield, as follows:

> DEAR SIR: Please forward me trip pass by first mail for Dr. E. Foley from Williamsburg to Lexington and return. The reason for issuing this pass is expressed in another letter this day written you, and it is very important, I think, at this time that he should receive this pass, and I would not request a pass of you for him did I not think it of much importance to the railroad company for me to do so at this time.

Mr. FOLK. 373B, page 150.

Mr. CARLETON. This is written from Black, Black, Golden & Owens, attorneys at law, Barbourville, Ky. This is April, 1912.

Mr. JOUETT. Just pass that for the present, then. [After examination.] Go ahead.

Mr. FOLK. Proceed to read it.

Mr. CARLETON. April 1, 1912, to Mr. B. D. Warfield, Esq., district attorney, Louisville & Nashville Railroad, Louisville, Ky.:

> DEAR SIR: Mr. William Tye, of this place, and the owner of the local newspaper, the People's News, has recently sold said paper to Dr. Charles Davis, of this place. By virtue of some arrangement with the L. & N. R. R. Co., Mr. Tye holds a pass over a portion of the company's lines in Kentucky. Because of said transfer of the ownership of said paper, Mr. Tye will have to surrender his pass, and Mr. Davis will likely apply for same instead. I write to ask, at the suggestion of Mr. Tye, that you permit Mr. Tye to retain his said pass during the remainder of this year. He agrees to assist us in the company's litigation in the courts. His services in this regard will amply justify the company in permitting him to hold the pass for said time. He is of a numerous and influential family, and some of his people are usually on the juries in our courts. I think it would be a good idea to allow him the use of his free transportation for said time.
>
> Yours, truly,
>
> JAMES D. BLACK.

W. L. M.: Please note and return. Mr. Black, besides being one of our attorneys at Barbourville, is also the first assistant attorney general of Kentucky under the present administration. Therefore I think it will be well to comply with his request. Please let me know whether I may say to him that this will be done.

B. D. W.

APRIL 2.

Mr. FOLK. Was the pass issued?

Mr. CARLETON. I think it was, but I could not state definitely, because it was prior to the date under which we were working. We only worked under 1913.

Mr. FOLK. Turn to 281, page 470.

Mr. CARLETON. That is all prior to that, in 281; that is 1910 and 1911. Shall I read it?

Mr. FOLK. Turn to illustrative letter showing the use of passes to influence legislators and legislation, beginning with 373B, page 5.

Mr. CARLETON. This is from the house of representatives—Mr. Harry J. Meyers.

Mr. FOLK. What house of representatives?

Mr. CARLETON. Presumably the Kentucky house. It is headed:

[Harry J. Meyers, representative eighty-second district, Kenton County, Covington, Ky.]

FRANKFORT, KY., *April 21, 1913.*

DEAR FRIEND: Inclosed find letter from Chas. Mohr. Now, it is needless to say I need him at the present time, so please send pass for Raymond Cochran and wife from Covington to Lexington, Ky., and return, and oblige.

Your true friend,

HARRY J. MEYERS.

It was signed and initialed by R. E. Fleming.

Another one—this is an inclosure from C. H. Mohr:

DEAR HARRY: Raymond Cochran, advertising boy in my office, gets married Monday week. He wants to go to Lexington, Ky. Write for a pass for him and his wife, please. Get letter away in time so he will not be disappointed.

Yours,

C. H. MOHR.

Here is another one from Mr. Meyers:

DEAR FRIEND BOB: Please send me pass at once for Mr. J. Gohn from Louisville, Ky., and return. I am going with him Thursday night or Friday. He becomes our chief of detectives May 1. Bob, please send pass for Spahm. Hope to see you Friday.

Yours, in haste,

HARRY J. MEYERS.

Here is another one from Harry J. Meyers. Shall I pass that; it is just the same?

Mr. FOLK. What is the heading of that letter?

Mr. CARLETON. This is house of representatives. These are all from the same representative, Meyers, soliciting passes.

Mr. FOLK. Read the letter.

Mr. CARLETON (reading):

[Harry J. Meyers, representative, eighty-second district, Kenton County, Covington, Ky.]

FRANKFORT, KY., *July 24, 1913.*

DEAR FRIEND BOB: Please send me pass for Sister Martha Jane and Mother Agata, from Lexington, Ky., to Covington, Ky., and return. Bob, please rush this. Sister Martha Jane is a sister to our city solicitor, and it means something to me. Please rush.

Yours, truly,

HARRY J. MEYERS.

Another letter, dated April 20, 1913:

> Dear Friend: Things looking better; please write Billy or phone him again; all I need is Reidlin. I have taken the sense of the people as I go along, and I think I will get by all O. K. Please send me pass for Mr. Wm. Kranz, our city jailor, from Covington, Ky., to Fkt. and return, via Lexington. One for Mr Matt. Troy, and one for Harry and Ed. Jobert, all from Covington, Ky., to Louisville and return. These are the ones I asked you for when you were here. Please send these, and don't kick, as you know they will do me some good and I need them all. Write me what you know concerning my race.
>
> Your true friend.
>
> Harry J. Meyers.

Mr. Folk. They were issued, were they?

Mr. Carleton. Yes, sir.

Mr. Folk. And the next letters.

Mr. Carleton. Another one from Harry J. Meyers, dated May 1 1913:

> Dear Friend: Please send me passes for Harry Miners, Harry Klosterman Rich. Von Hoene. These are our city eng., city clerk, and deputy. They will g on one pass.
>
> Please send me one for James Nolan, one for Wm. Kries, and Phil Gormley, all from Covington, Ky., to Louisville, Ky., and return. Now, this is a bunch of politicians I need. One of these is a power, and they all help me. I have some news "saying" I will have no opposition. I hope so. Now, please send them and don't kick, as they will do a heap of good.
>
> Your true friend.
>
> Harry J. Meyers.

One of them was issued and the other one was not, as the notation says "No; got one last week."

Mr. Folk. Read the next letter.

Mr. Carleton. Another from Harry J. Meyers, dated January 22, 1913:

> Dear Friend Bob: Please send me pass for Mrs. Goldie Reardon from Covington, Ky., to Trenton, Ky., and return.
>
> Now, Bob, this lady is Ed Morrow's stenographer, and I am getting this on Ed and Maurice Galvin's request. Mr. Galvin is doing his best to get off all opposition to me, so please rush it at once, as you know what good it will do me.
>
> Your true friend.
>
> Harry J. Meyers.
> *815 Main Street.*

Mr. Folk. That was issued, was it?

Mr. Carleton. Yes. Another one, dated July 26, 1913:

> Dear Friend: Please send me pass for Jno. Schnorbus and Wm. F. Spahn from Frankfort, Ky., to Covington, Ky., and return. I want them home for the primary, so please rush.
>
> Your true friend. Harry J. Meyers.

Mr. Folk. Was the pass issued?

Mr. Carleton. Yes, sir; one pass for both.

Mr. Folk. Proceed, page 12.

Mr. Carleton. A confidential letter——

Mr. Folk. Before you get to page 12, what is the motto at the heading of Mr. Meyers's letter?

Mr. Carleton. "House of representatives; united we stand, divided we fall. Harry J. Meyers"——

Mr. Folk. All right, that is sufficient. Proceed.

Mr. CARLETON. Letter dated May 5, 1913:

[Confidential.]

Hon. HARRY J. MEYERS,
Covington, Ky.

DEAR HARRY: I had a talk with Mr. Rouse the other day, and the outlook is very much improved from what it was two or three weeks ago when I was up to see him first. I will tell you more fully the first time I see you; meanwhile the best advice I can give you is to neither do nor say anything which might serve to give the organization a cause to "go after you."

Please treat this letter as strictly confidential.

Yours, truly,

——— ———,
Special Attorney.

Mr. FOLK. Turn to 372B, page 17.

Mr. CARLETON (reading):

[Isham P. Byrom, Winchester, representative from county of Franklin.]

HOUSE OF REPRESENTATIVES, STATE OF TENNESSEE,
Nashville, April 16, 1913.

Mr. D. G. HUDSON, *City.*

DEAR SIR: Please send me the following transportation:
Jno. Weddington from Winchester to Nashville and return.
Grey Weddington, jr., from Winchester to Nashville and return.
W. Weddington from Winchester to Nashville and return.
T. M. Ivey and I. Ivey from Winchester to Nashville and return.
Jno. Baxter and D. Baxter from Winchester to Nashville and return.

Very truly,

ISHAM P. BYROM.

Special: What do you want me to do with the bills now before the R. R. committee? Let me know at once.

I. P. B.

Mr. FOLK. Turn to 373B, page 13.

Mr. CARLETON. It says:

[Headquarters Democratic State campaign committee, Tyler Hotel, Louisville, Ky. Office of Ed. Young, campaign chairman, second congressional district, Madisonville, Ky.]

JULY —, 1913.

FRIEND BOB: Excuse this form of a letter, but it means a great deal to me. Bob, I am having a hot fight in this county but am almost certain to win. Two men who are men of influence here and who haven't exactly taken a stand in my race, and both of whom I need badly, are going to leave here right after the election and going to Covington, Ky., and I want to beg of you to send me a separate pass for each of them from Madisonville to Covington and return, and make the return good for as long as you feel you can. I would like to have it good for 60 days. Bob, you have always been my friend and I believe you know I have been yours and will always be your friend, and if you will do this favor it will long be remembered. Whatever you do, don't fail me this time. Let me have them as soon as possible so I can get them to say something for me. Their names are Sam Pressman and Morris Kohlman.

I want a pass for each so I can have a separate talk with each and make them believe I am their friend. Thanking you in advance for this, and wishing to be remembered to your son, with kindest regards to you, I beg to remain,

Your friend,

ED. L. YOUNG.

Mr. FOLK. Page 17. That pass was issued, was it not?

Mr. CARLETON. Yes; two of them.

B. P. O. E., No. 738,
Madisonville, Ky., December 16, 1913.

Hon. R. E. Fleming,
Louisville, Ky.

Friend Bob: Mrs. Young and myself intend to leave here next Monday for Versailles, Ky., to spend Christmas with her father and mother, and I would appreciate trip pass for said trip. Well, Terrell will be elected speaker on first ballot. I will assist him in the preliminaries. Is there anything you want at present? If so, be sure and let me know, and I may be able to handle same. Hope to see you in Louisville next week. I beg to remain.

Your friend,

Edw. L. Young.

Mr. Folk. Turn to 114.

Mr. Carleton (reading):

Madisonville, Ky., *November 15, 1913.*

Friend Robert: Not having received an answer to my last letter, I drop you this note.

Am I asking too much of you as a friend for a mileage book, as I want to see some of the boys who are to be in Frankfort this winter? It may be I can return the favor in some way this winter. I would appreciate an answer. Hoping to see you before long, and thanking you for past favors, I beg to remain.

Your friend,

Edw. L. Young.

Mr. Folk. Turn to page 18. That pass was issued?

Mr. Carleton. That was a mileage book, and it did not show on that whether the mileage book was issued or not. Presumably it was. Page 18:

[Kentucky Senate, Frankfort, Ky.]

Olive Hill, Ky., *December 31, 1912.*

Mr. Henry L. Stone,
General Counsel Louisville & Nashville Railway Co.,
Louisville, Ky.

Dear Sir: In April last—

Mr. Jouett. Wait a minute. Have you examined that? That is prior to 1913.

Mr. Carleton. It is December 31.

Mr. Jouett. Do you want to examine it, Colonel?

Mr. Stone. No; let him read it.

Mr. Carleton (reading):

Dear Sir: In April last I wrote your Mr. Dearing soliciting a favor which I would like granted at this time.

This concerned the granting of an annual pass to my friend, Mr. John G. Evans, of Frankfort, Ky., now assistant to the State fire marshal.

I explained that Mr. Evans is a close personal friend, and as he and his family are personally strong in the particular section, he was of great assistance to me politically in my last race; also during my stay at Frankfort during the last session.

Traveling, as he does, through all sections of the State he meets all the representatives and nominees, and I believe for this reason he could be of assistance to you in many ways, and I am also sure that this favor would be appreciated.

As I explained further to Mr. Dearing, I have never had occasion to ask a favor of this kind of you, as I live far from any connecting line of your road, and for this reason I want you to strain a point for me in favor of Mr. Evans, as I want him to look to me as responsible for the favor.

Mr. Dearing answered my letter explaining that this would probably have to come up before another department, and personally seemed inclined to get it through for me, but suggested that a request of this kind might have come direct from the State fire marshal. For certain reasons Mr. Bosworth (State fire marshal) has not been in a position where he could bring this up himself, especially at this time, although he would be glad to indorse this at a later time, but I want this to come from me, that Mr. Evans may be favored in the meantime.

I wish you would look up the correspondence between Mr. Dearing and myself in regard to the matter, and if you can see your way clear to extend this favor at this time I would appreciate it.

Awaiting your reply, I am,

Yours, very truly,

N. R. Cobern.

Mr. Folk. Page 19.

Mr. Carleton (reading):

[Louisville and Nashville Railroad Co., law department for Kentucky. Robert E. Fleming, special attorney.]

Louisville, Ky., *January 3, 1913.*

Col. H. L. Stone,
General Counsel, Building.

Dear Sir: Referring to the attached request upon you of Senator N. R. Cobern, under date 31st ultimo, for an annual pass in Kentucky for Mr. John G. Evans, assistant State fire marshal, Senator Cobern is a holdover senator and a good friend of ours, and I would like to favor him in this matter if it could be done consistently.

Under chapter 18 of the acts of 1912 a fire-tax fund is provided for by levying a tax of one-half of 1 per cent on the gross premium receipts of all fire insurance companies doing business in Kentucky, and all salaries and expenses of the State fire marshal are his assistants, detectives, and officers incurred in the investigation of fires and charged to and paid out of the said fire-tax fund.

The fire marshal is not restricted as to the number of assistants he may employ, but may exercise his discretion as to the force necessary to carry into effect the purpose of the act. The possession of an annual pass by Mr. Evans under the circumstances would not benefit him financially, but with a large force under the fire marshal riding on passes it might result that the fire-tax fund as now arranged for would be so greatly in excess of the needs that the insurance companies might be able to have the act amended so as to require a levy, for instance, of only one-fourth of 1 per cent of the gross premium receipts, and the liberality of the railroad companies therefore would result in a saving to the insurance companies.

Ordinarily, under the circumstances, I would not hesitate to decline Senator Cobern's request, but in view of the present antirailroad sentiment it might be well to accede to his request for the present, and later on it would be less difficult to cut off an annual pass of this character than one whose possession saves money to the holder thereof, or to the State, and unless you disapprove, I recommend that the pass be issued.

I know personally that Mr. Evans is a man of much influence and he very willingly assisted me on more than one occasion last winter.

Mr. Stone. What was the result of that application that you have just read?

Mr. Folk. You are reading the answer, are you not?

Mr. Carleton. This is in connection with it. Pass No. 2046 was issued to Mr. John G. Evans.

Mr. Stone. What are you reading from now?

Mr. Carleton. I am reading from a copy that was made of a letter from Mr. R. E. Fleming, your special attorney, addressed to you under date of January 3, 1913.

Mr. Stone. What I wanted to see——

Mr. Carleton. This letter was addressed to you, which was evidently turned down to Mr. Fleming with some note by you. It was evidently referred to Mr. Fleming, because he is returning it with this letter. Now, it says, "Referring to the attached request."

Mr. Stone. Explain that, because it will not show.

Mr. Folk. That letter to Col. Stone was evidently referred to Mr. Fleming.

Mr. Carleton. And Mr. Fleming is returning it now to Col. Stone with the reply.

Mr. Folk. Page 43.

Mr. Carleton (reading):

January 21, 1913.

Mr. Jno. Howe Peyton,
Assistant to President.

Dear Sir: Please recall our correspondence last year in regard to the pass for T. B. Johnson.

I did not request a pass for him for the present year, agreeing with you entirely in the position you took. However, it develops here that Mr. Johnson has considerable influence with certain members of the legislature. He is connected with fusionists and has personal friends from his own county. The matter has been brought up pretty sharply. It has narrowed itself to a question as to whether under all the circumstances we had best issue the pass regardless of the treatment he has given us.

Under all the circumstances, I would be glad to have you express your views on the subject before I take any action. I hate very much myself to recommend the issuance of this pass and yet there is a great deal of danger in not doing it.

Yours, very truly,

——— ———,
District Attorney.

This is a copy in the files of Mr. John B. Keeble, at Nashville.

Mr. Folk. Page 139.

Mr. Carleton (reading):

[Louisville and Nashville Railroad Co., law department. District attorney for Alabama.]

Montgomery, Ala., *December 2, 1910.*

Subject: Application for time pass for Mrs. Walker Percy. RR. to W. L. M. 12/3/10. H. L. S.

Col. H. L. Stone,
General Counsel,
Louisville, Ky.

Dear Sir: Please note inclosed letter from Hon. Walker Percy, division counsel for the Illinois Central Railroad Co., requesting time pass for his wife between Birmingham and Montgomery during the time the legislature is in session.

Mr. Percy, as you are probably aware, is a very distinguished lawyer of Birmingham and a member of the legislature. He wants his wife to have a time pass during the legislature to enable her to travel between Birmingham and Montgomery.

I think it would be good policy to furnish this pass, and I therefore recommend it.

I am hoping that Hon. Hugh Morrow, the senator from Jefferson County, in connection with Mr. Percy, will be able to exercise a most healthy influence in the coming legislature, and I believe that this courtesy to Mr. Percy's wife will be highly appreciated by him.

Yours, truly.

George W. Jones,
District Attorney.

Mr. Folk. Page 44.

Mr. CARLETON (reading):

[Louisville and Nashville Railroad Co. Line from St. Louis, Mo., to Nashville, Tenn. Office of the general freight agent. Lee Howell, general freight agent.]

EVANSVILLE, IND., *December 24, 1912.*

(In your reply refer to date and file No. 85203. Personal.)

Mr. W. L. MAPOTHER,
First Vice President, Louisville, Ky.

DEAR SIR: The attached from our friend, John T. Edmonds, of Hopkinsville, is explanatory of itself and is respectfully submitted with the hope and earnest recommendation that annual for 1913 be issued in his favor, for the reasons that pass has been issued to him in the past, of which you are familiar.

With regards and all the compliments of the season,

Yours, very truly,

LEE HOWELL,
General Freight Agent.

Mr. FOLK. Forty-five.

Mr. CARLETON (reading):

[Louisville & Nashville Railroad Co. Line from St. Louis, Mo., to Nashville, Tenn. Office of the general freight agent. Lee Howell, general freight agent.]

EVANSVILLE, IND., *December 22, 1911.*

(In your reply refer to date and file No. 85203. Personal.)

Mr. W. L. MAPOTHER,
First Vice President, Louisville, Ky.

DEAR SIR: The attached letter from Mr. John T. Edmunds, of Hopkinsville, Ky., requesting renewal of his annual pass, "good between points in Kentucky," is respectfully submitted.

Mr. Edmunds is a good friend, as you know, of this company at Hopkinsville, and is always of great service in keeping us informed of what is going on down there locally, and I would respectfully recommend that, if it is entirely consistent under the rules governing, he receive the requested renewal of his annual transportation.

The second paragraph of his letter refers to an interurban proposition from Hopkinsville to Guthrie, etc., that is being agitated, which I have had up from time to time with the third vice president.

Yours, truly,

LEE HOWELL,
General Freight Agent.

Mr. FOLK. Page 46.

Mr. CARLETON (reading):

[John T. Edmunds, attorney at law, Hopkinsville, Ky.]

HOPKINSVILLE, KY., *December 21, 1911.*

Capt. LEE HOWELL, G. F. A.,
Evansville, Ind.

DEAR CAPTAIN: If consistent, I would be glad to have my annual pass, No. 1990, renewed during the coming week, as I want to be present at the meeting of the legislature the first week in January.

Things are moving slowly with Mr. Van den Burg for the last month, but he is plugging along. Seemingly the fight on the proposition will come up in the late spring.

I was in your office just before you returned from Chicago, having one or two matters that I wanted to take up with you in person; that is, some suggestions that I thought might be best to follow in regard to the freight situation here. Will probably be in Henderson in a few days and can run over to Evansville.

Hoping you are well, I remain,

Very truly, yours,

J. T. EDMUNDS.

OCTOBER 18, 1915.

JOHN A. TIPTON, *Covington, Tenn.*

DEAR SIR: I herewith inclose you transportation for William, the "feet ball" member of your family, from Memphis to Nashville and return.

You need not say anything to Judge Everett. I have seen him in person. He will not be a candidate for Congress, but Sims will.

The judge don't know yet what he is going to do. I will be at Humboldt next Friday, and it is my intention to run down to Memphis Saturday morning, the 23d, and be there that night when Patterson speaks. If you can, suppose you run down to Memphis that day. I would like to see you and have an old-time talk with you.

You may gently whisper to your friends that we have the "stuffin" beat out of Lea. Yours, truly.

Mr. FOLK. It is signed "D. G. Hudson"?

Mr. CARLETON. Well, this is a copy.

Mr. FOLK. This letter was in answer to the one you now read?

Mr. CARLETON. This is from John A. Tipton, Covington, Tenn., October 16, 1915.

Mr. JOUETT. Let me see that. I do not see that that has anything to do about passes.

Mr. FOLK. It is about passes, is it not?

Mr. CARLETON. Yes; this is a request for a pass.

Mr. WALLER. So far as the railroads are concerned, we have no objection to that; but there are some matters in that not on passes, and it seems to me that it is improper to read or ask to be read private letters of that nature that do not pertain to passes at all, and I do not think it is right. It does not bear on this controversy, but to read private and apparently confidential letters between two men; most of the letter does not concern the railroads at all.

Mr. JOUETT. Let the chairman read it.

Chairman MEYER. I do not know anything about the contents of the letter, but if it relates to a pass, does it not properly belong here?

Mr. WALLER. The part that does relate to a pass I will agree should properly be in, but the other part should not go in.

Chairman MEYER. Is it not the uniform custom upon the part of counsel to insist upon reading the whole letter if a part is read?

Mr. JOUETT. We might insist that we have the right to object to any except that which is pertinent.

Mr. WALLER. Those are private matters which do not pertain to the railroads. There is a paragraph in there about the pass, and as to that, that is all right; but I do not think the other should be read, and I do not think Gov. Folk should insist that the other should be read.

Mr. FOLK. I will have to see what portion you object to. Is it the sentence reading, "Write me what you honestly think of the senatorial situation in middle Tennessee"?

Mr. WALLER. I object to all of it except as to the pass. Because a man is working for a railroad and may write a letter of that sort, or because some friend may write a person working for the railroad, does not mean that the railroads have anything to do with the matter.

Mr. FOLK. I submit Mr. Hudson's relations with the N., C. & St. L. were such that a letter from him indicating an activity in politics would be appropriate, especially in connection with a request for a pass in the same letter.

Chairman MEYER. Is this a letter from Mr. Hudson—to whom?

Mr. **Folk**. It is a letter to Mr. Hudson from J. A. Tipton. The letter from Mr. Hudson has been read.

Mr. **Waller**. It is a letter from a man who has no connection with the railroad at all, and in the last paragraph he asks for a pass. I do not think it is fair that these private and confidential things should be read in a proceeding of this kind.

Chairman **Meyer**. Does it go to the question of the relationship of the railroad to the public?

Mr. **Waller**. I think not, in any way, shape, or form. It is simply a gentleman in west Tennessee writing to his friend, Mr. Hudson, and in that letter he asks, in one paragraph, for a pass. I do not think those things ought to be read in public here, because they were private, confidential letters.

Chairman **Meyer**. I think perhaps, under the circumstances, it will be necessary for me to read the letter.

Mr. **Waller**. Yes.

Chairman **Meyer**. But it is about adjournment time, and suppose we adjourn and I will rule on this at 2 o'clock.

(Whereupon, at 12.35 p. m., a recess was taken to 2 p. m.)

AFTER RECESS.

Will H. Carleton resumed the stand and testified further, as follows:

Direct examination (continued):

Chairman **Meyer**. Now, the letter regarding which there was some discussion before the recess I find was in the regular correspondence files relating to passes which were handed to the examiner as a part of the files relating to passes, and it seems to me proper to admit that in an investigation of this kind.

Mr. **Carleton** (reading):

[John A. Tipton, attorney at law, Covington, Tenn. Carver Building.]

October 16, 1915.

Hon. D. G. Hudson, *Nashville, Tenn.*

Dear Doss: I have not been able to see Everett yet in regard to the matter about which we were talking, but his court meets here on the first Monday in November, and I will have a talk with him then and go over the whole matter with him.

Write me what you honestly think of the senatorial situation in middle Tennessee. It is mostly Patterson and McKellar down here.

My boy William wants to go to the Tennessee-Vanderbilt football game in Nashville October 30, so I am going to ask you to send transportation for him there and return.

Let me hear from you as soon as convenient.

Your friend,

Jno. A. Tipton.

Centerville, Tenn., *September 1, 1915.*

Hon. A. F. McConnell, *Nashville, Tenn.*

Dear Sir and Friend: I have talked with seventy-five or a hundred people here from different parts of the county and believe this county can be carried against Lea without very much trouble. I have talked with George Grimes, ex-sheriff. He will be all right when the time comes, but I want you to get hold of him the first chance you have.

Con. Yates promised me to visit your office to-morrow. I understand J. B. Walker will not be for Lea. The old county court clerk, J. W. Russell, will not be for him. But both of our county papers are for Lea at this time, but the Hickman County News can be handled all right at the proper time. Circuit court meets here Monday and I expect to be on hand Monday and Tuesday, and I think I will be able to gain a good deal of information, especially so if Patterson has announced by that time. It will be easier to carry this county for Patterson than anyone in the race so far. I want to come to Nashville about the 9th or 10th and will give you what information I have. Hoping to hear from you in the next few days,

I am, your friend,

G. S. Roberts.

September 2, 1915.

Mr. Geo. S. Roberts, *Centerville, Tenn.*

Dear Sir: I have your favor of September 1, giving me information in regard to certain matters in your county, which I appreciate very much. I will thank you to keep in touch with the situation down there, and keep me fully advised, and do all you can along the lines I was talking to you about the last time you were in my office.

I am inclosing you transportation from Centerville to Nashville and return.

Yours, truly,

——— ———,

Chief Law Agent.

House of Representatives, State of Tennessee.
(John D. Green, Brownsville, Chief Clerk).
Nashville, January 12, 1915.

Messrs. Hudson & McConnell, *City:*

Please send by bearer of this a card pass over your lines in this State for the year 1915.

Needless to say that I have always been your friend. Will thank you very much for this favor.

When I can serve you command me.

Very respectfully, your friend,

E. G. Collier,
Sergeant at Arms, House.

October 8, 1915.

Hon. J. A. Clement, *Dickson, Tenn.*

Dear Sir: I herewith inclose you transportation for Mrs. Clement to Nashville and return; also for your son Archie and brother from Dickson to Pegram and return, as requested in yours of the 7th.

Yours, truly,

——— ———,

Assistant Attorney.

[L. R. Turner, McMinnville, senator, Franklin, Grundy, Marion, Warren Counties.]

Senate of Tennessee.
Nashville, Tenn., November 14, 1915.

Mr. F. McConnell, *Nashville, Tenn.*

Dear Sir: I have to make a trip from McMinnville to Clifty Creek this next week, and Mrs. Turner wants to go out there with me and will appreciate it if you will send her pass for this trip.

Patterson speaks here on next Tuesday night. Wish you run up here. Come if you can. I think Luke is about to give it up out here. He sends Marvin Campen up here about every three days, and I think he goes back and reports favorable. Come to the speaking if you can. Thanking you, etc., I am,

Yours, as ever,

L. R. Turner.

A-2006.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Memphis, Tenn., January 8, 1915.

MR. H. F. SMITH,
Traffic Manager, Nashville, Tenn.

DEAR SIR: Mr. J. H. Creath, vice president of the Central Bank & Trust Co., Memphis, and one of the political leaders of Shelby County and of the State, was furnished last year by our line and the L. & N. with annuals. He was in my office yesterday and showed me an L. & N. annual for 1915, and asks if you won't be good enough to secure for him a similar pass over the N., C. & St. L. Mr. Creath is a power in this section and is closely allied with Mr. Fisher of the L. & N. He is very friendly to our interests, and I am sure will appreciate the courtesy requested.

Yours, truly,

JNO. C. RYAN, *General Agent.*

MR. WALLER. Have you a notation about that, whether a pass was issued or not?

MR. CARLETON. Card pass L-448 was issued January 19, 1915, good to points in Tennessee.

EAGLE PRINTING CO.,
(WILLIAM J. EWING),
517 Church Street, Nashville, Tenn., June 4, 1915.

MR. JOHN HOWE PEYTON,
President N., C. & St. L. Ry., Nashville, Tenn.

DEAR SIR: I would very greatly appreciate it if you could see your way clear to renew the transportation courtesies so long extended to me by former officials of the road, among others, Maj. Lewis, Mr. Thomas, Mr. Clarkson, and Mr. Waller.

These courtesies were extended up to January 1 this year and were, to be sure, greatly appreciated and never abused.

Very truly,

WM. J. EWING.

There is a pencil notation:

MR. CLARKSON. What do you recommend? H. A. C.

MR. COYTE. That we comply. His requests will be moderate or always have. He is subject to call night or day, is thoroughly loyal, and when "in the saddle" again will make us a valuable ally. T. A. C.

H. A. C. Issue pass. J. H. P. 6/5/15.

A card pass was issued June 5, 1915.

[Letterhead of the board of aldermen, Tullahoma, Tenn.]

MR. A. F. MCCONNELL, *Nashville, 10.* NOVEMBER 22, 1915.

DEAR SIR AND FRIEND: H. M. Ross requested a pass for himself and wife to Nashville and return. He wants to come Thursday morning. Please send them and oblige,

Your friend,

G. C. RANEY, C. M.

Oh, how we did get beat, but we fixed Lea.

A—1915.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
LAW DEPARTMENT,
Nashville, Tenn., February 3, 1915

Judge CLAUDE WALLER,
General Counsel, Building.

DEAR SIR: The following senators and representatives of the general assembly have made personal requests for card passes over the N., C. & St. L. Ry. for the year 1915:

Senator Tom Wilson.
Senator Church.
Representative Shropshire.

Representative Rawls.
Representative Tankard.

They stated that they would like to have the passes to use during the recess. My judgment is that we had better issue these passes, as all these parties have shown quite a friendly disposition toward our interests. Senator Wilson telephoned me Saturday night before leaving town and asked that his pass be sent to him not later than to-day.

Yours, truly,

A. F. McConnell, *Chief Law Agent.*

Tullahoma Board of Trade,
December 31, 1914.

Mr. D. B. Carson, G. M.,
Nashville, Tenn.

Dear Sir: Inclosed you will find complimentary pass that you were so kind to give me to use during the past year, and I want to thank you for same. It has been of a great deal of assistance to me, and I hope that you can see your way clear to mail one for the coming year.

I have done a great deal for your company in the past, and expect to do a great deal more in the future, as we are just starting to do a great work in this section that I know your people are very much interested in.

I know that I will have to make a great many trips over the State in the interest of the road during the coming year, and I hope you will allow me a renewal of the inclosed pass.

With kindest personal regards, and wishing you a most prosperous year for yourself and your road, I am,

Yours, very truly, Jno. W. Harton.

Mr. Folk. Turn to 372B, page 16.

Mr. Carleton (reading):

[Tennessee department of insurance. J. Will Taylor, commissioner.]

Nashville, *May 30, 1913.*

Hon. D. G. Hudson, *City.*

My Dear Sir: I have your favor inclosing card pass No. 187 over your road for remainder of year, for which I thank you very much. When I can serve you, call on me. If you should have any fires that you want investigated, let me know.

Very truly, E. E. Butler.

Mr. Folk. Page 23.

Mr. Carleton (reading):

[Commissioners of elections for Obion County, Tenn., Union City, Tenn.]

1/2/1913.

Hon. A. F. McConnell,
Nashville, Tenn.

My Dear Sir: Through the kindness of your company for past 10 or 12 years I have attended the opening of the legislature and tried to get my friends on important committees, that they might be of use to us all. I have also tried to have our friends elected to State offices. If you will allow us another trip of transportation, I believe we will both profit. With best wishes, I am,

Truly, yours,

D. P. Caldwell.

Mr. Folk. Page 27.

Mr. Carleton (reading):

[Tennessee Saw and Planing Mills. John S. Cooper, W. L. Cooper, proprietors.]

Quebeck, Tenn., *March 11, 1913.*

Mr. D. G. Hudson, *Nashville.*

Dear Sir and Friend: I am just in receipt of yours of the 10th inclosing card pass, good to July 1. This, with the many other favors shown me, I assure you are not without appreciation, and I am only waiting an opportunity to reciprocate.

When the legislature meets the fellow-servant bill will be up, and if it is "a kin" to the last one it should not pass. Can't I help you some way? I would enjoy spending a few days for your interest. Again thanking you.

I am, yours, truly,

Jno. S. Cooper.

Mr. Folk. Page 28.

Mr. Carleton (reading):

[Hall of the city of Ripley. A. I. Dorsey, mayor. J. E. Pierson, recorder. J. M. Carney, treasurer.]

Ripley, Tenn., *March 14, 1913.*

Hon. D. G. Hudson,
Nashville, Tenn.

Dear Sir: I will thank you to mail to Hon. Wardlaw Steele a pass from Gibbs to Nashville and return. Also, mail to Mr. B. Bowen, 1518 Carr Avenue, Memphis, a pass from Memphis to Nashville and return.

Mr. Bowen is not a constituent of mine, but he is and will be a friend in the right time and place in Nashville next week, and I hope you will grant him the pass.

Yours, very truly,

A. I. Dorsey.

Mr. Folk. Page 30.

Mr. Carleton (reading):

Box 439, Paris, Tenn., *December 25, 1912.*

Hon. Dorsey Hudson.

Kind Sir: I was so glad to see you Wednesday (Christmas) in the little city of Paris. Representative Weldon talked to me shortly after he announced as a candidate for the legislature. I certainly want to be there. It certainly reminds me of old times to even write your name. Please kindly send me a pass from Paris to Nashville and return. I want to be in Nashville to help clean up and be on hand for the opening.

Respectfully,

Henry Edmunds (Col.).

M. Folk. 31.

Mr. Carleton (reading):

Paris, Tenn., *December 30, 1912.*

Hon. Dorsey Hudson.

Kind Sir: Christmas Day in Paris you talked with me and suggested that I write to you at once for a pass. I went home and wrote the letter immediately, but as yet I have not received the transportation. Now, this is a very important matter, as I am seeking to get on in the house. Perhaps I can save the day for you, as I did when the fellow-servants' bill. I did a service of weight that day when I bore from your hands a note to Hon. J. J. B. J. ——— to table an amendment. So please send me transportation from Paris to Nashville and return.

Respectfully,

H. C. Edmunds.

I want to be porter again in the house, and I want to get up there as early as possible. Please send it, as you suggested I write at once.

Henry C. Edmunds.

Mr. Folk. Did he get the pass?

Mr. Carleton. Yes; card No. 57.

Mr. Folk. Page 34.

Mr. Carleton (reading):

Huntsville, Ala., *April 9, 1913.*

Mr. A. F. McConnell, *Nashville, Tenn.*

Dear Sir: I did not know that Alabama had an antipass law, or of course I would not have asked you for one.

The politicians have got me in a devil of a mess. This is the first time I have been away from home and couldn't go back when I wanted. I don't know how the farm is doing, but guess it is running itself somehow.

No doubt you miss me on the pass business, and that is the only consolation I have in this, that I get relief from that. I promised to send G. W. Clark, Wartrace to Nashville and return, one before I left, and maybe you had better send it. He is a brother of Henry Clark's and a better man. I wish you had time to write me about the legislative situation. Blakemore only writes about three or four lines, and I have to guess at the rest.

What is Judge Waller's opinion about the work of the house without a quorum? Harpole, I believe, wants back worse than I do. I can join you now in saying "To h— with Crump."

I would be glad, if you have time, to hear from you.

Your friend,

ROBT. GALLAGHER.

Mr. FOLK. Page 41.

Mr. CARLETON (reading):

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
McMinnville, Tenn., January 11, 1913.

A. F. MCCONNELL, Esq., *Nashville, Tenn.*

DEAR SIR: If consistent I would thank you to furnish me pass, McMinnville to Nashville and return, for Mr. A. R. Hammer. This at the request of Legislator Green.

Mr. Hammer is a lawyer of this place and a Democratic politician, and it might bring results. With kindest regards, I am,

Yours, very truly,

J. B. HOLT, *Agent.*

Req. of S. Green.

Mr. FOLK. 49.

Mr. CARLETON (reading):

SHERIFF FRANKLIN COUNTY,
Winchester, Tenn., October 13, 1913.

Mr. A. F. MCCONNELL, Esq.,
N., C. & St. L., Nashville, Tenn.

DEAR SIR: I wish you would please furnish me with mileage book over N., C. & St. L. Ry., for which I thank you in advance, and when I can serve you call on me.

Respectfully,

W. H. HUGHES, *Sheriff.*

A. F. McC.: Please send this at once, as Mr. Hughes is our friend.

Yours, truly,

A. J. BARNES,
Personal Representative of A. F. McConnell.

Mr. FOLK. 52.

Mr. CARLETON (reading):

[The Weakley County Bank. T. I. Little, president; Dr. J. E. Shannon, vice president; W. T. Killebrew, cashier; D. M. Bruce, assistant cashier.]

DRESDEN, TENN., *January 11, 1913.*

Hon. A. F. MCCONNELL,
Nashville, Tenn.

DEAR MC: Will you send me some transportation to Nashville and return? As you know, the legislature will get balled up unless I come, and I do not want to embarrass any of your conductors by offering them a ticket. I want to come up Tuesday evening.

Yours, very truly,

W. T. KILLEBREW.

Mr. FOLK. 55.

Mr. CARLETON (reading):

JOHN T. RAULSTON,
South Pittsburg, Tenn., January 3, 1913.

Mr. A. F. MCCONNELL,
Nashville, Tenn.

DEAR FRANK: I wish you would send me passes from Cowan to Memphis, Tenn., by way of Nashville and return, for the following parties: W. A. Cantrell, Morris Westmoreland, and Pete Cantrell. W. A. Cantrell is the sheriff of this county and is the political boss over here just now and has done me many favors. The other two are his deputies.

It will be a great favor to me if you can grant this courtesy.

Yours, truly,

J. T. RAULSTON.

Mr. FOLK. 72.

Mr. CARLETON (reading):

[C. Lee Winchester, Memphis, representative from county of Shelby.]

HOUSE OF REPRESENTATIVES, STATE OF TENNESSEE,
Nashville, January 27, 1913.

Mr. F. M. MCCONNELL,
Care N. C. & St. L. Rd. Co.

DEAR SIR: Assistant Attorney General Harry Holman, of Memphis, desires a pass from Nashville to Memphis. He did not have time to secure one before coming to Nashville on a visit to an ill mother. Gen. Holman prosecutes numbers of cases for the railroads in Memphis, and he and I both will greatly appreciate this favor. He is anxious to return to-morrow, so kindly let the bearer have this transportation, and oblige,

Yours, truly,

C. LEE WINCHESTER.

Mr. FOLK. Turn to 373B, page 79.

Mr. CARLETON (reading):

LOUISVILLE & NASHVILLE RAILROAD CO., LAW DEPARTMENT,
Louisville, Ky., December 30, 1910.

Mr. W. L. MAPOTHER,
First Vice President.

DEAR SIR: Herewith I hand you correspondence concerning the issuance of free transportation to Sheriff Vaughn and Deputy Sheriff Campbell, of Webster County, and the recommendation, after a conversation with him, made by Mr. Warfield with respect to free transportation to said officials and his views concerning sheriffs of other counties.

I am of the opinion that we can not furnish free transportation to any persons in the State of Kentucky, official or nonofficial, that will promise a greater return in influence and practical benefits than such as may be issued to the sheriffs of counties in which this company does business, especially where other railroad companies operating lines in the same counties issue such transportation to the sheriffs of those counties.

The sheriff has more to do than any other official with the make-up of the juries that are called on to try our damage suits. If we have his good will he can help us greatly (I do not mean corruptly but simply in the discharge of his plain duties) by not summoning, where he is directed to obtain a jury from bystanders, those men of the county that are unfair to corporations and especially to railroad companies. The sheriff has also the summoning of our witnesses, as well as the witnesses of parties who bring damage suits against this company. If we have his good will his being in touch with the witnesses will be to our advantage.

I therefore recommend, without our volunteering to give the sheriffs of the several counties in this State where our lines run free transportation, that we concede such transportation to all in such counties that may apply directly or indirectly through our attorneys otherwise therefor, and for that reason recommend that the passes asked in behalf of Sheriff Vaughn, of Webster County, be issued to him for the year 1911 in way of mileage books. I do not recommend that such transportation be issued to any deputy sheriff except for very special reasons.

Respectfully, yours,

H. L. STONE, *General Counsel.*

Mr. FOLK. 23.

Mr. CARLETON. (reading):

[Louisville & Nashville Railroad Co. Office of general freight agent, Kentucky division, and superintendent of terminals, Andrews Building, Fifth Avenue and Race Street. BRENT ARNOLD, general freight agent and superintendent.]

CINCINNATI, OHIO, *November 10, 1913.*

B. M. STARKS, *Esq.*,
General Manager, Louisville, Ky.

DEAR SIR: I issued pass No. 362929, in favor of Mrs. W. A. Elmer and daughter Ruth (10 years of age), wife and daughter of Hon. W. A. Elmer, commissioner, city of Newport, Ky., from Covington, Ky., to Lexington, Ky., and return. As it had to be used at once, I could not secure from Mr. Fleming, as usual.

We are having matters of importance before the commissioners of Newport, as you know. I have to go before the commissioners again to-day to endeavor to defeat the proposed ordinance requiring watchmen at all crossings on Saratoga Street.

Yours, truly,

BRENT ARNOLD,
Superintendent.

Mr. FOLK. 31.

Mr. CARLETON (reading):

[State of Kentucky, State Insurance Board. Frankfort. Personal.]

MOUNT STERLING, KY., *April 12, 1913.*

Mr. R. E. FLEMING,
Louisville, Ky.

DEAR MR. FLEMING: Mr. Quincy Ward, State game warden, whose home is in Bourbon County, has charge of my brother's campaign. Please send to me here an annual pass over your line for J. Quincy Ward. Mr. Ward can and will be great benefit to you. If you prefer you can ask your attorney at Paris, Ky., in regard to Mr. Ward. Thanking you in advance, I am.

Yours, truly,

M. C. CLAY.

Mr. FOLK. Thirty-six.

Mr. CARLETON (reading):

[Tennessee State Board of Health. "Public health is public wealth." R. Q. Lillard, M. D., secretary and executive officer.]

NASHVILLE, *December 31, 1912.*

Mr. JNO. BELL KEEBLE,
Division Counsel L. & N. R. R.,
Vanderbilt Building, City.

DEAR SIR: I wish to acknowledge receipt of transportation for Dr. Lucius P. Brown, Mr. C. W. Crockett, Dr. H. H. Shoulders, Dr. Olin West, and your humble servant.

It is needless for me to thank you, as you know of my willingness to serve you or your interests at any time you need me.

Yours, cordially,

R. Q. LILLARD.

Mr. FOLK. Thirty-seven.

Mr. CARLETON (reading):

LOUISVILLE & NASHVILLE RAILROAD CO.,
ATLANTA DIVISION, OFFICE OF THE SUPERINTENDENT,
Etowah, Tenn., March 20, 1912.

Mr. W. L. MAPOTHER,
First Vice President, Louisville, Ky.

DEAR SIR: I shall be glad if you will renew for the current year attached pass issued in favor of M. K. Shoemaker between points in Tennessee.

This man is a local constable, and I use him in various ways.

Yours, truly,

A. B. BAYLESS, *Superintendent.*

ABB–Mo.
Issue. C. J. W. 3/21/12.

Mr. FOLK. 135.

Mr. CARLETON (reading):

[Louisville & Nashville Railroad Co. Office of superintendent of terminals. 312 North Eighth Street. John Fitzgerald, superintendent.]

ST. LOUIS, MO., *January 9, 1912.*

(In your reply refer to date and file No. 14258–No. 3.)

Mr. W. L. MAPOTHER,
First Vice President, Louisville, Ky.

DEAR SIR: I inclose herewith L. & N. annual pass No. 714 of your issue, reading in favor of John J. Faulkner, good between points in the State of Illinois, during the year 1911.

Mr. Faulkner is commissioner of public works of the city of East St. Louis, which is an important municipal office, and he is therefore in position to exercise considerable influence in our favor, and as he is friendly toward our company, consider it very desirable that we take advantage of every reasonable means to keep him on our side. Will be glad, therefore, if you will kindly have the inclosed pass reissued to Mr. Faulkner's favor for the year 1912. As a matter of fact, this might be the means of our staving off the improvement of Third Street through Commissioner Faulkner.

Yours, truly,

JOHN FITZGERALD, *Superintendent.*

Mr. FOLK. 136.

Mr. CARLETON (reading):

[Louisville & Nashville Railroad Co. Office of superintendent of terminals. 312 North Eighth Street. John Fitzgerald, superintendent. Personal.]

ST. LOUIS, MO., *February 23, 1912.*

(In your reply refer to date and file No. 14258–3.)

Mr. W. L. MAPOTHER,
First Vice President, Louisville, Ky.

DEAR SIR: Yours of February 20, file 46723, relative to L. & N. annual pass good between points on our line in Illinois for Mr. E. F. Harper, city engineer, of East St. Louis.

We need Mr. Harper's influence, and our furnishing this transportation will be the means of retaining his friendship; as a matter of fact, it might enable us to prevent the improvement of Third Street, which work, if done, would cost us in the neighborhood of $20,000. Mr. Harper has always been very friendly to our line, rendering us assistance at various times in his official capacity of city engineer whenever requested to do so.

Of course, if our law department has decided that the pass can not be legally issued, that settles the matter; but at the same time, wish to call your attention to the fact that exactly similar transportation for the year 1912 was issued in favor of Mayor Lambert and Commissioner of Public Works Faulkner, of East St. Louis.

Under the circumstances, trust you will reconsider your decision in the matter and see your way clear to issue the pass in question.

Yours, truly,

JOHN FITZGERALD, *Superintendent.*

There is no fear Mr. Harper will misuse the pass. He is a responsible man.

Mr. FOLK. 151.

Mr. CARLETON (reading):

[Louisville & Nashville Railroad Co. Office of the general freight agent, Kentucky division, and superintendent of terminals. Brent Arnold, general freight agent and superintendent. Andrews Building, Fifth Avenue and Race Street.]

CINCINNATI, OHIO, *November 10, 1913.*

(In your reply refer to date and file number.)

R. E. FLEMING, Esq.,
Special attorney, Louisville, Ky.

DEAR SIR: Please send me pass for Chester A. Keslar, city accountant, and R. W. Lamb, assistant, Newport, Ky., from Covington to Falmouth, Ky., and return.

I am having important matters up with the city of Newport now affecting our interests and we must be diplomatic.

Yours, truly,

BRENT ARNOLD,
General Freight Agent and Superintendent.

Mr. FOLK. 149.

Mr. CARLETON (reading):

S. D. ROUSE, ATTORNEY AT LAW,
Covington, Ky., May 27, 1912.

Mr. B. D. WARFIELD,
District Attorney L. & N. R. R. Co., Louisville, Ky.

DEAR SIR: Will you please send a pass for W. M. Hudson to Louisville and return? Mr. Hudson is going to the convention, and I would like very much if you would find it possible to send the pass for him. He is the county deputy sheriff and has put himself out at all times to accommodate us in condemnation suits and other matters in which I have had to have the services of the sheriff in the country. Please send the pass to me, and I will see that he gets it.

Yours, very truly,

S. D. ROUSE.

Mr. FOLK. 74.

Mr. CARLETON (reading):

BARBOURVILLE, KY., *November 10, 1913.*

DEAR JOE: Was talking to Judge Sampson the other day about getting a pass over the L. & N., and he told me to write to you. I can get a letter from him to the company if you think you would need it. I want annual pass. I can make some money along after Judge Hammons get in as county judge, and I can be worth something to the railroad company in the courts here. You can tell them I have got lots of friends in this county and will be their friend.

With best wishes, I am your friend,

W. W. BYERLY.

Mr. FOLK. 76.

Mr. CARLETON (reading):

LOUISVILLE & NASHVILLE RAILROAD CO.,
LAW DEPARTMENT FOR KENTUCKY,
Louisville, Ky.

MR. WARFIELD: Referring to the attached correspondence relative to transportation for W. W. Byrley, of Barbourville, which you handed me several days ago.

While at Barbourville on Saturday last, Mr. H. H. Owens, one of our attorneys there, on his own initiative, referred to this matter and said he believed if the company would furnish Byrley, who has been sheriff of the county for two full terms, is now master commissioner under Judge Sampson, and is a man of wide influence in his community, an occasional mileage book, we would have enlisted on our side in Knox County a man who could and would do us a great deal of good.

I am inclined to believe that it will be the part of wisdom to comply with Senator Bosworth's request. I know of no county in the State where we are more in need of friends than in Knox County, and if the issuance of the transportation requested will have anything like the effect Sampson, Bosworth, and Owens says it will, the company will be well repaid.

J. J. D.

NOVEMBER 18, 1913.

W. L. M.: For reasons which I will be glad to explain to you more in detail, if you care to have them, I believe it is to the best interests of the company to issue an occasional mileage book to W. W. Byrley. Will you please send me such a book for him?

B. D. W.

NOVEMBER 19.

Mr. FOLK. 77.

Mr. CARLETON (reading):

2618. LAW OFFICES OF BROWDER & BROWDER,
Russellville, Ky., April 10, 1911.

Judge DEARING: Will you send the pass and let president's office have this letter for their file?

4/15/11.

W. E. R.

W. L. MAPOTHER, Esq.,
First Vice President, Louisville, Ky.

DEAR SIR: Our friend, T. S. Rhea, is going to be nominated for State treasurer on the Democratic State ticket.

Of course, he has an opponent, but we do not think that there is the slightest doubt but what he is on the prearranged slate. When he gets to Frankfort, it will be demonstrated in a short time that he has got more sense than the entire aggregation up there, and we would like you very much to give him an annual pass in Kentucky which will be of great use in making his present canvass.

It is not necessary to suggest the importance of the office he will hold. If you can do this, we will be glad to deliver him the pass.

Yours, very truly,

BROWDER & BROWDER.

Mr. STONE. What is the date of that?

Mr. FOLK. What is the date?

Mr. CARLETON. The date of the letter is April 10, 1911.

Mr. STONE. Please read the dates hereafter. We may want to object to them. I thought all were excluded except the year 1913?

Mr. FOLK. What is the date of the notation?

Mr. CARLETON. April 15, 1911.

Mr. FOLK. 1911 or 1913?

Mr. CARLETON. 1911 the pass was issued.

Mr. FOLK. What other notation is there on that?

Mr. CARLETON (reading):

Issue good until July 1st. C. J. W. 4/13. W. L. M. I recommend such pass until July 1st, 1911, and for all of the year if nominated. H. L. S.

Mr. FOLK. All of the year if nominated?

Mr. CARLETON. All of the year if nominated; yes.

Mr. FOLK. I think that is sufficient to illustrate the letters asking for passes and passes used to influence jurors, courts, and public opinion; and, if there is no objection, we will not have the witness read any further letters, but will permit him to make these books exhibits to his testimony.

Mr. JOUETT. So far as 1913 is concerned.

Mr. WALLER. I have no objection to those with regard to the N., C. & St. L.

Mr. FOLK. Will you please make the report No. 372B, containing copies of letters and files of the N., C. & St. L. in reference to passes, an exhibit to your testimony?

Mr. CARLETON. Yes.

(The book so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 1," witness Carleton, received in evidence April 28, 1916, and is attached hereto.)

Mr. STONE. These apply to 1913?

Mr. FOLK. Yes.

Mr. STONE. And those alone?

Mr. FOLK. Do you wish to object to all letters other than the 1913 letters?

Mr. STONE. That is what we are investigating, and in the other book, too, if they contain any other letters.

Mr. CARLETON. Some of those leters prior to December refer to passes for 1913. Occasionally you will find some requests in December, 1912, for passes in 1913.

Mr. FOLK. All these letters, I understand, are for 1913.

Mr. STONE. And dated in that year?

Mr. FOLK. Yes. Also make 373B Exhibit No. 2 to your testimony, in so far as it contains copies of letters during the year 1913 relating to passes issued or to be issued by the Louisville & Nashville Railroad Co.

(The book so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 2," witness Carleton, received in evidence April 28, 1916, and is attached hereto.)

Mr. FOLK. These are the letters you saw the other day; these are 12 letters?

Mr. STONE. What about it?

Mr. FOLK. Do you wish to object to them?

Mr. STONE. I understood counsel this morning to say they had 10 or 12 letters we could look at, and we looked at them and they have been read. Now, you want to read the whole book?

Mr. FOLK. No; we want to save time and offer it in evidence.

Mr. STONE. I do not see the object of it, Mr. Chairman, of reading 10 or 12 letters and then offering a whole book of letters in addition unless it is that the gentleman may give publicity as far as he chooses to a few letters and then put in others constituting a book of that size.

Chairman MEYER. I understood, Col. Stone, that the letters which were read were regarded by Gov. Folk as typical of the rest.

Mr. STONE. I did not so understand.

Chairman MEYER. And, of course, all these letters are copies of letters; and if they are not correct copies, the company, being in possession of the originals, could make the corrections.

Mr. FOLK. Col. Stone, pardon me, probably misunderstood me. I do not intend to read any more of these letters.

Mr. STONE. But you want them considered in the record as though they had been read?

Mr. FOLK. No; but merely as an exhibit to his testimony.

Mr. STONE. What is the difference, if they form part of the record? Now, I understand, Gov. Folk, there are a large number of these letters in that book that do not pertain to 1913 at all. Is not that a fact?

Mr. FOLK. That is correct; there are some letters in 1912.

Mr. STONE. We ask the chairman to certainly exclude all that do not apply to 1913.

Mr. FOLK. Those letters, however, are copies of letters in the files of the Louisville & Nashville Railroad.

Mr. STONE. Yes; and they might be 15 years old, for all we know.

Mr. FOLK. There are no letters there beyond 1912 or 1910.

Mr. STONE. I understand we are investigating, and are called here to answer matters concerning 1913, and for that reason we do not want the record cumbered with a whole lot of correspondence that has no bearing on the year we are investigating.

Chairman MEYER. But, Col. Stone, as I stated this morning, the investigation, however goes further back than 1913, except with respect to passes.

Mr. STONE. Not in this hearing.

Chairman MEYER. Well, the investigation of the hearing under order 6319——

Mr. STONE. That was the commission's investigation by examiners and not at this hearing. Only 1913 was to be heard.

Chairman MEYER. Well, since this is an investigation by the commission on its own motion, I see no objection to the filing of these things as exhibits.

Mr. STONE. Have you a copy of the notice of this hearing?

Chairman MEYER. I have not the notice right here; but you remember at the opening of the hearing I stated that this hearing embraced dockets 6319 and 8488, which by order of the commission had been consolidated. Now, then, it is that consolidated proceeding which we are hearing here, which embraces all that 6319 embraces; 6319 is not limited by time to 1913.

Mr. COLSTON. 6319?

Chairman MEYER. Yes.

Mr. COLSTON. If it please your honor, I think you are mistaken, because question 13 in 6319 is the specific question which limits this particular part, and it says that you shall report the number of free annual passes, the number of free trip passes—the number of every kind of free passes issued by each of said railroads each year since January 1, 1911. Now, that limits us to 1911 there.

The hearing of this, the order of the commission, and the Senate resolution are all limited to passes since January 1, 1911. But, further than that, the subpœna duces tecum, upon the basis of which these copies have been put in as though they were originals, because you, having subpœnaed the originals, counsel for the railroad company have consented to copies going in instead of certain originals, the subpœna duces tecum was limited to the single year 1913, and therefore it is not proper that a book of alleged copies of letters should be put into the record without any opportunity to verify them, or without an opportunity to examine them, or without an opportunity to determine whether we desire to interpose an objection or not. We have determined these matters for 1913, but we should not be asked to consent to copies of correspondence, or alleged copies of correspondence, being put into the record for other years.

Chairman MEYER. First, with respect to the limitation of the time of investigation, what I stated had reference to the whole proceeding. With respect to passes you are doubtless correct as to limitation to January 1, 1911; but the other parts of this investigation are not limited in time to January 1, 1911.

Mr. COLSTON. But these have no relation to those, your honor, and the testimony must have relation to the issues or subject matter of the investigation.

Chairman MEYER. Now, then, I wanted to ask the witness whether the letters embraced in this exhibit relate to free transportation—whether all of the letters relate to free transportation.

Mr. CARLETON. All of the letters relate to free transportation, and they were all of them in files containing the 1913 requests. They are kept largely in files which cover several years.

Chairman MEYER. Then, not to spend any more time on that at this point, I will rule that this exhibit will be received in so far as it relates to passes for 1913 and subsequent periods, leaving the balance of the letters open for further consideration.

Mr. STONE. That is satisfactory, your honor.

Mr. FOLK. Turn to your schedule of passes issued during the year 1913 by the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad. You were asked this morning by counsel for the Louisville & Nashville Railroad to differentiate the travel on the Louisville & Nashville Railroad passes and travel on the Nashville, Chattanooga & St. Louis Railway passes. So begin with the first name and indicate the number of passes used, the value of the passes so used, apportioning the value to the Louisville & Nashville Railroad that belongs to that road, and the value to the

Nashville, Chattanooga & St. Louis Railway that belongs to that carrier.

Mr. STONE. Now, does that relate to members of the legislature alone, Governor?

Mr. FOLK. It relates to public officials.

Mr. STONE. Including the members of the legislature?

Mr. FOLK. Yes, sir: of Tennessee, this is.

Chairman MEYER. Only for Tennessee?

Mr. FOLK. Only for Tennessee. Is that correct?

Mr. CARLETON. Yes, sir: for Tennessee only.

W. K. Abernathy, State representative: Two term passes and 31 trip passes on the Louisville & Nashville Railroad: value of the travel amounting to $167.82. The Nashville, Chattanooga & St. Louis Railway, 1 annual and 162 trip passes, the value of travel amounting to $2,340.97. I might say that that represents the value only of the trip passes. The annual pass apparently was not used.

A. J. Argo, State representative, received 2 term passes and 32 trip passes, the value of the transportation used being $340.93.

Mr. FOLK. That is the Louisville & Nashville Railroad?

Mr. CARLETON. That is the Louisville & Nashville Railroad. The Nashville, Chattanooga & St. Louis Railway, 2 term passes and 214 trip passes: value of the travel amounting to $2,628.31.

Mr. FOLK. That is during the year 1913?

Mr. CARLETON. During the year 1913.

Mr. FOLK. And all of these passes you are now speaking of were passes issued and used during the year 1913?

Mr. CARLETON. During the calendar year 1913.

Mr. FOLK. Proceed.

Mr. CARLETON. E. Blakemore, State senator: On the Louisville & Nashville Railroad, received 1 annual pass and 19 trip passes. The value of the transportation amounted to $128.78. On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 295 trip passes: total value of the transportation being $1,540.42.

Mr. F. E. Bryant, State representative: Received on the Louisville and Nashville Railroad 2 term passes and 25 trip passes, the value of the transportation being $150.62. On the Nashville, Chattanooga & St. Louis Railway he received 1 annual or term pass and 340 trip passes, the value of the transportation being $4,042.32.

Mr. FOLK. You mean 340 trip passes were actually used?

Mr. CARLETON. Three hundred and forty trip passes were actually used.

Mr. I. P. Byrom: On the Louisville & Nashville Railroad he received 1 annual pass and 4 trip passes, the value amounting to $30.54. On the Nashville, Chattanooga & St. Louis Railway there were 2 term passes and 400 trip passes, the value of which amounted to $3,227.96.

Mr. FOLK. That is the value of the transportation used?

Mr. CARLETON. Those are the values of the passes which were actually used.

Mr. FOLK. Do you mean that they may not have been used? Did the books indicate that they were used? You got these figures from the returns of the conductors, did you not?

Mr. CARLETON. No; we got these from the stubs of the passes issued. This information is all taken from the stubs of the trip passes which are taken and issued to the individuals for their use.

Mr. D. J. Campbell, State representative: He received on the Louisville & Nashville Railroad 1 annual pass and 1 trip pass requested, the value of the travel being only $1.27. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 160 trip passes, the value being $1.913.86.

Mr. J. A. Clement, State senator: On the Louisville & Nashville Railroad 2 term passes and 49 trip passes, the value amounting to $249.18. On the Nashville. Chattanooga & St. Louis Railway, 2 term passes and 519 trip passes, the value being $3,036.95.

Mr. J. L. Cochran, State representative: On the Louisville & Nashville Railroad 1 annual and 1 trip pass, which was used to the extent of $3.44. On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 296 trip passes, the value being $3,448.56.

Mr. E. G. Collier, State representative: On the Louisville & Nashville Railroad, 1 annual pass and 12 trip passes, the value being $63.10 On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 186 trip passes and 1 mileage book, the total of all being $1.217.28.

Mr. A. I. Dorsey, State representative: On the Louisville & Nashville Railroad he received 2 term passes and 17 trip passes, the value being $74.54. On the Nashville, Chattanooga & St. Louis Railway——

Mr. FOLK. How do you estimate the value of an annual pass?

Mr. CARLETON. The value of an annual pass, that represents—we check those with the conductor's reports—is the only way we could tell, and we have the conductor reporting the number of the pass and the man's name as used between certain stations, and we ascertained the mileage and applied the 3-cent rate.

Mr. FOLK. You estimated according to the mileage actually used?

Mr. CARLETON. Yes.

Mr. FOLK. Actually traveled?

Mr. CARLETON. Actually traveled. The Nashville, Chattanooga & St. Louis Railway, for Mr. Dorsey, 2 term passes and 175 trip passes; total value, $2,026.54.

J. M. Drane, State representative: Received 2 term passes on the Louisville & Nashville Railroad and 12 trip passes; value, $96.53. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 190 trip passes, a value of $2.123.85.

R. A. Elkins, State senator: On the Louisville & Nashville Railroad he received 2 term passes and 44 trip passes, a value of $412. On the Nashville, Chattanooga & St. Louis Railway Co. he received 2 term passes and 695 annual trip passes, a value of $8,635.74.

A. E. Emmons, State representative: Received 2 term passes on the Louisville & Nashville Railroad, and 29 trip passes, a value of $168.68. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 244 trip passes, a value of $3,566.29.

Henry Fisher, State representative: On Louisville & Nashville Railroad received 2 term passes and 6 trip passes; value of $18.60.

On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 161 trip passes; value of $1,586.52.

Mr. A. J. Fitzpatrick: On the Louisville & Nashville Railroad, 2 term passes and 158 trip passes, a value of $588.99. On the Nashville, Chattanooga & St. Louis Railway he received 1 annual pass and 45 trip passes, a value of $500.66.

Mr. Robert Gallagher, State representative: On the Louisville & Nashville Railroad received 2 term passes and 5 trip passes, a value of $48.64. On the Nashville, Chattanooga & St. Louis Railway received 2 term passes and 1 mileage book and 217 trip passes, of a value of $1.120.95.

Mr. J. L. Hare, State senator: On the Louisville & Nashville Railroad received 1 annual pass, but no record of its use. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 442 trip passes, a value of $4,136.51.

John A. Harpole, State representative: On the Louisville & Nashville Railroad received 1 annual pass; no record of its use. On the Nashville, Chattanooga & St. Louis Railway received 2 term passes and 111 trip passes; the value, $748.96.

A. S. Johnson, State representative: On the Louisville & Nashville Railroad received 2 term passes, which only show 96 cents. On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 250 trip passes; value of $3,247.58.

Mr. J. H. Koffman, State representative: On the Louisville & Nashville Railroad received 2 term passes and 106 trip passes, of a value of $293.26. On the Nashville, Chattanooga & St. Louis Railway received 2 term passes and 319 trip passes; value of $3,086.64.

Mr. J. W. Lambert, State senator: On the Louisville & Nashville Railroad received 2 term passes, 17 trip passes; value, $119.82. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 347 trip passes; value, $2,341.59.

Mr. G. R. McDade, State representative: On the Louisville & Nashville Railroad received 2 term passes and 6 trip passes; value of $83.18. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 300 trip passes; value of $3,338.21.

Mr. L. P. McFarland, State representative: On the Louisville & Nashville Railroad received 2 term passes and 64 trip passes; a value of $397.76. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 173 trip passes, a value of $2,385.08.

Mr. Folk. Do not read any more under 200 trip passes.

Mr. Carleton. Nothing under 200?

Mr. Folk. Nothing under 200 trip passes.

Mr. Carleton. J. W. McKinney, State senator: Now, if he receives 200 on one, do you want the corresponding amount on the other, or just the amount he received?

Mr. Folk. If he received 200 on either road, read it.

Mr. Carleton. Read them on both roads?

Mr. Folk. Yes.

Mr. Carleton. On the Louisville & Nashville Railroad he received 2 term and 24 trip passes, amounting to $194.52. On the Nashville, Chattanooga & St. Louis Railway, he received 2 term and 493 trip passes, amounting to a value of $5,461.42.

Mr. W. R. McWhorter, State representative. On the Louisville & Nashville Railroad he received 2 term passes and 1 trip pass, amounting to $17.40. On the Nashville, Chattanooga & St. Louis Railway, 3 term passes and 272 trip passes, a value of $3,355.43.

W. H. Maxwell, State senator. On the Louisville & Nashville Railroad he received 2 term passes and 221 trip passes, a value of $1,002.60. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes and 247 trip passes, a value of $2,322.41.

Mr. P. O. Roberts, State representative. On the Louisville & Nashville Railroad, received 1 annual and 1 trip pass, 96 cents was the value of the travel. On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 283 trip passes, a value of $3,076.52.

Mr. H. T. Stewart, State senator. Received on the Louisville & Nashville Railroad 2 term passes and 91 trip passes, a value of $664.41. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 344 trip passes, a value of $2,298.50.

Mr. M. H. Taylor, State representative. On the Louisville & Nashville Railroad received 2 term passes and 10 trip passes, a value of $39.68. On the Nashville, Chattanooga & St. Louis Railway he received 2 term passes and 497 trip passes, a value of $6,544.72.

Mr. D. B. Thomas, State senator. On the Louisville & Nashville Railroad received 3 term passes and 78 trip passes, a value of $484.73. On the Nashville, Chattanooga & St. Louis Railway 2 term passes, 721 trip passes, and 1 of another form, probably a ticket, amounting to the value of $5,379.12.

A. L. Tood, State representative. On the Louisville & Nashville Railroad received 1 annual and 90 trip passes, a value of $735.29. On the Nashville, Chattanooga & St. Louis Railway, 2 term passes, 321 trip passes, a value of only $251.10.

Mr. J. C. Walker, State senator. On the Louisville & Nashville Railroad received 1 annual pass and 18 trip passes, a value of $141.24. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 221 trip passes, a value of $1,770.75.

Mr. T. J. Walsh, State senator. On the Louisville & Nashville Railroad received 2 term passes and 233 trip passes, a value of $762.91. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 660 trip passes, a value of $7,697.28.

W. E. Weldon, State representative: On the Louisville & Nashville Railroad received 2 term passes and 93 trip passes, a total of $1,016.84. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 412 trip passes, a value of $3,735.52.

Mr. Harry Williamson, State representative: On the Louisville & Nashville Railroad, received 2 term passes and 34 trip passes, a value of $252.96. On the Nashville, Chattanooga & St. Louis Railway 2 term passes and 227 trip passes, a total value of $2,759.59.

Mr. Folk. What is that chart, Mr. Carleton, which you hold in your hand, with reference to passes?

Mr. Carleton. This is a statement of the free transportation in Tennessee on the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, which was received and requested by State senators——

Mr. Folk. You mean free transportation?

Mr. Carleton. Free transportation. Shall I read the rest of them?

Mr. FOLK. Yes.

Mr. CARLETON. Which was received and requested by State senators, State representatives, other State officials, and judges for the year ending December 31, 1913, which is compiled from the report submitted to the commission by the division of carriers' accounts, in relation to Senate resolution No. 153, Sixty-third Congress, first session.

Mr. FOLK. You have only read from this chart with reference to those who received 150 passes or more?

Mr. CARLETON. Yes, sir; that is all, and not all of those, because I omitted in the latter part some that received——

Mr. FOLK. In the latter part of your testimony, 200?

Mr. CARLETON. Yes.

Mr. FOLK. Will you file as Exhibit No. 3 to your testimony that chart, giving the entire information?

Mr. COLSTON. We would like to have copies of all exhibits put in. I believe the rules of practice of the commission contemplate the furnishing of copies to all parties interested of any exhibit introduced in any proceeding.

Mr. FOLK. Wherever it is practicable. It would be hardly possible to furnish copies of this.

Mr. COLSTON. I am not asking for anything that is not practicable.

Mr. FOLK. That is entirely practicable, and you can have that, if you would like to have it.

(The statement so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 3, Witness Carleton," received in evidence April 28, 1916, and is attached hereto.)

Mr. WALLER. Will you furnish me with a copy of these exhibits?

Mr. FOLK. Yes; we will be glad to.

Can you state the total number of annual passes issued by the Louisville & Nashville Railroad for the year 1913, the total number of term and trip passes, and the total number of free tickets?

Mr. CARLETON. Issued to whom?

Mr. FOLK. Members of legislative bodies or other public officials.

Mr. STONE. In what territory, Governor?

Mr. FOLK. In Kentucky or Tennessee. Or have you that report divided up in this way?

Mr. CARLETON. Not this report. I could get that from our other report, the detail report that we have, but it will probably—I think it is possibly recapped. This that I have is the entire line, the entire Louisville & Nashville Railroad system.

Mr. FOLK. You may give the information as to the entire line the way you have it.

Mr. CARLETON. Annual or term passes? Do you wish issued to and at the request, or separately, or combined?

Mr. FOLK. No; the total.

Mr. CARLETON. The annual or term passes, total number, 630; trip passes, 5,785; other forms, 163; total of all forms, 6,578. That is——

Mr. FOLK. Issued to public officials?

Mr. CARLETON. Issued to members of legislative bodies or other public officials.

Mr. FOLK. Over the entire line?

Mr. CARLETON. Over the entire line.

Mr. FOLK. During the year 1913.

Mr. STONE. What States?

Mr. CARLETON. That is over the entire line.

Mr. STONE. Well, give the States, please.

Mr. CARLETON. The States of Kentucky, Tennessee, Illinois, Virginia—I do not believe there were any from Virginia, although we figured it out. I believe, if I am to give it that way, I would rather have that detail rather than read it from this. [After referring to papers.] I can give this now by the States of Tennessee and Kentucky separately. Would you like it that way?

Mr. FOLK. Just give the total, and if the colonel asks you what State you can state the States, but you need not state the amount in each State.

Mr. CARLETON. It includes Kentucky, Tennessee, Alabama, Mississippi, Florida, Virginia, North Carolina, Illinois, and Indiana. Now, I have this information just as you asked it first, Gov. Folk, if you would like it for Kentucky and Tennessee.

Mr. FOLK. Go ahead.

Mr. CARLETON. The annual term passes issued in the State of Kentucky, 120; in the State of Tennessee, 361. The trip passes issued in the State of Kentucky, 1,966; in Tennessee, 3,672. The other forms of free transportation in Kentucky, 163. The total of all forms in Kentucky, 2,249; in Tennessee, 4,033.

Mr. FOLK. Those are passes issued to legislators and public officials?

Mr. CARLETON. Yes.

Mr. FOLK. What is the total value of all the free transportation issued by the Louisville & Nashville Railroad for the year 1913?

Mr. CARLETON. To these public officials?

Mr. FOLK. To public officials.

Mr. CARLETON. In all States?

Mr. FOLK. In all States.

Mr. CARLETON. $61,727.59.

Mr. FOLK. What is the total number of miles of travel represented?

Mr. CARLETON. 2,155,465.

Mr. FOLK. What is that document which you have before you?

Mr. CARLETON. This is what we call Appendix A of our report of passes issued under the Senate resolution.

Mr. FOLK. By the Louisville & Nashville Railroad?

Mr. CARLETON. By the Louisville & Nashville Railroad. This report of free transportation issued by the Louisville & Nashville Railroad, Appendix A, being a list of the passes issued.

Mr. FOLK. Does that contain the information gathered by you and under your direction with reference to the passes issued by the Louisville & Nashville Railroad to public officials?

Mr. CARLETON. Yes, sir.

Mr. FOLK. I will ask you to make that exhibit 4 to your testimony.

(The statement so offered and identified was received in evidence, and thereupon marked "Commission's Exhibit No. 4, Witness, Carleton," received in evidence April 28, 1916, and is attached hereto.)

Mr. JOUETT. What State is that in?

Mr. FOLK. That covers all their line.

Mr. COLSTON. Have you a copy of that?

Mr. FOLK. You have no copy of that, have you?

Mr. CARLETON. We have no other copy.

Mr. FOLK. Does that exhibit cover all the information you obtained regarding passes on the Louisville & Nashville Railroad?

Mr. CARLETON. No; that is simply statistical information showing the number, the names of the parties requesting and receiving, and the number of passes and the mileage.

Mr. FOLK. Where is the remainder of your report or investigation of the Louisville & Nashville Railroad?

Mr. CARLETON. The rest of it consists of Appendix B, which you have previously filed, and the report proper, of free transportation issued by the Louisville & Nashville Railroad, which was rendered on June 2. That contains all of the information. At the beginning of that there is just a personal memorandum which I would like to take out, if you are going to introduce it in evidence.

Mr. COLSTON. Even if it can not be done now, I would ask that the commission furnish us copies of these exhibits.

Chairman MEYER. We will endeavor to do that.

Mr. COLSTON. Because there are some statements in this exhibit that we think are in error, from such cursory examination as we have been able to make so far, and we would like to have the exhibit, with the right, if we deem it desirable, to recall Mr. Carleton for cross-examination.

Mr. FOLK. For that purpose we have introduced it, so you can interrogate him about any matter.

Chairman MEYER. That may be understood.

Mr. FOLK. Please make this report, 373, in relation to free transportation issued by the Louisville & Nashville Railroad Co., Exhibit 5 to your testimony.

Mr. CARLETON. Yes.

(The statement so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 5, Witness Carleton," received in evidence April 28, 1916, and is attached hereto.)

Mr. JOUETT. Has that been read?

Mr. FOLK. No; if you prefer, he can read it, to save time.

Mr. JOUETT. Is this the basis for the preliminary report presented?

Mr. FOLK. That is a report made by the examiner.

Mr. JOUETT. It is just a paper that we do not know anything about, and there is no testimony about it, and I was trying to get what it means and relates to.

Chairman MEYER. Suppose you examine it.

Mr. JOUETT. Give us a little time to examine it and see what it is

Mr. FOLK. I will ask you to state, Mr. Carleton, with reference to the Nashville, Chattanooga & St. Louis Railway, the total number of passes issued to public officials or at the request of public officials for the year 1913 and the value thereof.

Mr. CARLETON. Sixteen thousand five hundred and eighty passes, involving 5,573,135 miles, and a value of $164,524.81. Of this amount we absolutely established the use of 4,709,681 miles, aggregating in value $139,198.04.

Mr. STONE. Mr. Carleton, to save delay and cross-examination later on that point, what do you mean by "established," as contradistinguished from the total number of miles?

Mr. CARLETON. In our trip passes we accepted the issuance of the pass from the pass stub book, as was found in the carrier's office, showing that the pass had been issued to a certain individual, giving the name of the party and the points from and to which the pass was issued, as required by our regulations, from which the pass had been detached, and was no longer on file in the carrier's office in its unused pass stock.

Against that we established a check against the trip passes which had been turned in by the conductors, and those where we found the pass itself that had been signed and punched by the conductors as having been used, turned in with the conductors' reports, we accepted: I mean we counted that as absolutely established.

Then the difference between that represents the trip passes which had been issued, which were not on file in the carrier's office, either as used or as unused, as to which there was a slight doubt as to whether the pass was actually used or whether it was not returned by the conductor.

As the auditor, Mr. McGlimmery, in your ticket account, states he has a great deal of trouble with his conductors in receiving reports on all forms of transportation, that there is a large percentage of his tickets that are not turned in, that he knows are listed and keep coming in quite a while afterwards, there is a slight question as to those unestablished values, as to whether they were actually used or not; but from the incomplete records of the carrier, we could not determine it with accuracy, so we have shown this——

Mr. STONE. In giving this total mileage, you treated the entire mileage covered by the passes as used?

Mr. CARLETON. Covered by the passes as issued.

Mr. STONE. Well, I mean that.

Mr. CARLETON. Yes.

Mr. STONE. Now, there is a very large mileage which was not turned in at all. You do not know whether it was used at all?

Mr. CARLETON. I would not say it is a very large mileage.

Mr. STONE. Take that first item: You say the total mileage of members of legislative bodies and other public officials is 5,573,135. Now, how much of that was not established by the return of the passes?

Mr. CARLETON. There were 863,454 miles; and I would like to see my other exhibit.

Mr. STONE. That is a right smart piece of mileage.

Mr. CARLETON. But in connection with that, I wish to state that the use of the annual passes as reported there is unquestionably away below the amount of the actual use, owing to the fact that the conductors—our experience shows that the conductors fail to properly report the use of annual passes.

Mr. STONE. How do you know that?

Mr. CARLETON. Well, largely as a matter of——

Mr. STONE. Guess, is it not?

Mr. CARLETON. No; deductions from our reports. For instance, we would find a party living on a line that makes a distance of some magnitude, probably more than he would cover afoot or in an automobile; that the conductors going in one direction, and so forth, would report him every day, or frequently going down in one direction, sometimes 30 or 40 times, and sometimes going back only twice; and, in that way, undoubtedly we have numerous instances as to the inaccuracies of the conductors' reports in failing to show the correct amount, and information in the manner in which it should be; therefore this is——

Mr. STONE. However that may be, Mr. Carleton, you have charged up against these railroads every mile that the passes covered, whether they were used or not: is not that a fact, in these reports?

Mr. CARLETON. In these reports they are charged up with all the mileage of the trip passes, differentiated between that—showing all of it issued and differentiated between that which has been established and——

Mr. STONE. I speak of the passes.

Mr. CARLETON. And those that the use has not been established.

Mr. STONE. But in running down the value of these passes you have included the full mileage that the passes covered?

Mr. CARLETON. The full mileage of the transportation issued.

Mr. STONE. Although a large part was unverified or established?

Mr. CARLETON. Not as to its issuance. The issuance of it has been established beyond question.

Mr. STONE. I understand, but a large part was not established.

Mr. CARLETON. No; the issuance——

Mr. STONE. I am not talking about the issuance.

Mr. CARLETON. The use?

Mr. STONE. If you catch my question, it is this: You have charged up the value of these trip passes as though the whole of the mileage covered by them was used, whether it was or not. I mean this first item; you make out 800,000 miles that was not established, as having been used; is not that a fact, and give the value of it in this total?

Mr. CARLETON. Yes, sir; that is as to the value of the use.

Mr. FOLK. That is 600,000 out of a total of 5,000,000.

Mr. CARLETON. Eight hundred thousand out of a total of 5,573,000.

Mr. FOLK. Did you find that the conductors frequently failed to report the use of passes?

Mr. CARLETON. Yes, sir.

Mr. FOLK. About what percentage did you find the conductors failed to report?

Mr. CARLETON. Well, that would be—that is hard to tell, as to the percentage they failed to report. The way I based my deduction is this, that we find that there was a large number of the reports missing. We could not——

Mr. FOLK. You mean the conductors' reports missing?

Mr. CARLETON. The conductors' reports missing. We made an exhaustive check of one month's reports, taking all the revenue trains which ran over the line, and checked with the dispatchers' train sheets, and made a statement showing such trains as the conductors failed to render their pass reports on, and that is over in my working papers, as to give you the exact percentage—I was looking to see if I had reported it in here—which show that there was a large percentage.

A check was made of the reports for the month of July in the manner indicated, against the dispatchers' reports of trains which had actually run, showing that of 11,706 trains supposed to carry passengers, which were passenger trains, 1,536 pass reports, or practically 13 per cent of the reports which should be on hand, were missing from the carrier's files.

Therefore I thought it was reasonable to assume that the same ratio of missing reports would apply practically throughout the year; and, basing on that, it would indicate that our annual pass reports which we have reported for the use of the annual passes, are probably enough to compensate for any discrepancy on the trip passes which might not be established by their use.

Mr. FOLK. Please file report 372 as Exhibit No. 6 to your testimony.

Mr. JOUETT. Is that the one you just examined?

Mr. FOLK. I suppose it is.

Mr. JOUETT. We object to it. We have not had a chance to examine it, but it is just a lot of conclusions of this witness, and the facts are here and the commission can draw their own conclusions. We do not think that report is at all competent. We have not had an opportunity to examine it.

Chairman MEYER. You can take time to examine it further.

(The paper so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 6, Witness Carleton," received in evidence April 28, 1916, and is attached hereto.)

Mr. FOLK. What further information have you as to the investigations of the Nashville, Chattanooga & St. Louis Railway in regard to free transportation?

Mr. CARLETON. There should be a 372A. Has A been introduced, 372A? There are three reports.

Mr. FOLK. I am asking you now to make report 372A Exhibit No. 7 to your testimony.

Mr. STONE. What is that?

Mr. CARLETON. That is a statement similar to the one you just looked at, of the Louisville & Nashville Railroad, showing the list of the recipients and requestors, with the mileage and the amount of money, showing the names of the recipients and the requests.

Mr. STONE. A corresponding report to 373 of the Louisville & Nashville Railroad?

Mr. CARLETON. Yes.

Chairman MEYER. May I suggest if there is any question as to the comments of the examiner on the conclusions, if that troubles you, it should be understood that that is not a part of the exhibit, because what the commission wants is the facts.

Mr. JOUETT. Well, that is just what we are objecting to. It seems that there are two reports here in which the examiners did give their conclusions on the whole subject, in the nature of a report to the commission, as the basis of your report, and it is that part of your report which we object to.

Chairman MEYER. Well, that objection will be noted.

(The paper so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 7, Witness Carleton," received in evidence April 28, 1916, and is attached hereto.)

Chairman MEYER. Now you understand that those conclusions suggested by the examiners are not the conclusions of the commission. In fact, the commission does not know anything about them.

Mr. JOUETT. I understand that, but I do not think it is competent evidence for those to go into the record as facts—as matters that are proven.

Mr. **Folk**. They are produced largely for your benefit, Mr. Jouett, in order that you may examine them, and, if they are not correct, you may examine the witness with reference to them.

Mr. **Jouett**. But I say it is not competent evidence, Governor, to introduce the conclusions that this man would draw from a lot of facts, when that is for the commission alone, and he has introduced the facts. Why introduce his conclusions? The facts are all here. These elaborate reports show the facts.

Mr. **Folk**. Those reports deal only with the facts.

Mr. **Jouett**. That is true, and here is a document where the witness draws his conclusions about the customs of the companies about doing this, that, and the other thing. We have not been able to examine them fully, but I can see there are no facts in them.

Now, I understand that our objection is noted, and we will have an opportunity to examine it and see if we want an opportunity to cross-examine, and your honor does not deem it as evidence, except as to the facts stated, and not as to the conclusions.

Chairman **Meyer**. That is all that has been stated so far.

Mr. **Folk**. State what this report is. It contains facts. There is no argument, is there, by you?

Mr. **Carleton**. No; it states facts. Occasionally we would give a conclusion, as, for instance, we speak of a fact, as Col. Stone asked me why I thought the reports were inaccurate. That test that I made there, showing 13 per cent which we absolutely established as missing for the month of July, and then as instanced here, as I stated in the report, that the conductors' failure to report the use of the passes is evidenced by the number of cases where it is impossible to establish continuous journeys on a pass. We will get a man using a pass to a certain point, where it covers three divisions of the line. The conductor on the first portion of the line will report the use of the pass; the intermediary conductor will not report it; but the third conductor will check it up and report it.

Now, we would make that suggestion in there, that he traveled over the intermediate portion.

Mr. **Folk**. Such conclusions, then, as made in this report, are conclusions that would be drawn by an expert accountant?

Mr. **Carleton**. Well, are made by anyone that would try to establish the use of these passes. It would not take an accountant to do that, Gov. Folk.

Chairman **Meyer**. Let me state here, if you object to statements of this kind, for instance, because they appear to be conclusions, you do not question but what the witness has just stated is evidenced?

Mr. **Jouett**. That part, perhaps, would be all right.

Chairman **Meyer**. If you desire time to go over that report, with the understanding you may cross-examine Mr. Carleton with respect to any of it, that may be understood.

Mr. **Jouett**. We will do that.

Chairman **Meyer**. You have not sufficient time to cross-examine at this moment.

Mr. **Jouett**. We have not seen it before, but we will examine it during the evening.

Chairman **Meyer**. That may be understood, or at some subsequent hearing.

Mr. **Jouett.** At some subsequent hearing, because we can not very well do it to-night.

Chairman **Meyer.** That may be understood. Now, with that understanding, have you any objection?

Mr. **Jouett.** Well, we object to it all as incompetent, but under your honor's ruling, it will go in, and we do not think that——

Chairman **Meyer.** I understand you reserve your objections, as a matter of form?

Mr. **Folk.** That is all.

Mr. **Jouett.** I just want to reserve the right to cross-examine.

Mr. **Stone.** We do not want to waive our right. I want to go on right now.

Cross-examination:

Mr. **Stone.** How much experience have you had as an examiner for the Interstate Commerce Commission?

Mr. **Carleton.** Since May 10, 1909.

Mr. **Stone.** Roughly, seven years, then?

Mr. **Carleton.** Some seven years.

Mr. **Stone.** You had charge of both these sets of examiners, the one for the Nashville, Chattanooga & St. Louis Railway at Nashville, and the one at Louisville for the Louisville & Nashville Railroad?

Mr. **Carleton.** Yes, sir.

Mr. **Stone.** How many had you in the set at Louisville?

Mr. **Carleton.** I could not tell you exactly without refreshing my mind from our record, because we had—they varied from 3 or 4 or 5 when we first commenced, until prior to May or June, we had in the neighborhood of 23 or more men; I would not state exactly.

Mr. **Stone.** Twenty-three or four men?

Mr. **Carleton.** I think so.

Mr. **Stone.** In the general office building of the Louisville & Nashville Railroad at Louisville?

Mr. **Carleton.** In the general office building and in their room which was provided for us over at the station, over at the Broad Street depot.

Mr. **Stone.** Tenth and Broadway?

Mr. **Carleton.** Yes.

Mr. **Stone.** How long were you so engaged?

Mr. **Carleton.** Well, from the 1st of January, 1914, until June 8, 1914, we were engaged in the preparation of the statistics; but at the same time, a large number of the men were engaged in gathering other portions of information in connection with it, not all of it on these passes.

Mr. **Stone.** About how many months were you altogether?

Mr. **Carleton.** I would say we were probably three months or such a matter, actively engaged on the passes, three and a half.

Mr. **Stone.** But other matters connected with your report took more time?

Mr. **Carleton.** Yes, sir.

Mr. **Stone.** How much more?

Mr. **Carleton.** We were in the office of the carrier until along about October.

Mr. **Stone.** How many men did you have at Nashville?

Mr. CARLETON. We had very nearly about the same number. Do you remember, Mr. Keene, exactly the number you had?

Mr. KEENE. Thirty or twenty-eight.

Mr. CARLETON. Mr. Keene says we had 28.

Mr. STONE. That would make over 50 men altogether.

Mr. CARLETON. Yes, sir; I would say so, part of the time.

Mr. STONE. They were all working under the Interstate Commerce Commission in this particular investigation?

Mr. CARLETON. Yes, sir.

Mr. STONE. You covered how many years, so far as the pass business is concerned?

Mr. CARLETON. One year.

Mr. STONE. The resolution called to begin the 1st of January, 1911, did it not?

Mr. CARLETON. It did.

Mr. STONE. With all this time and with all these men you were working on other parts of this investigation and as to the passes for the year 1913?

Mr. CARLETON. Yes.

Mr. STONE. Why did you not undertake to investigate 1911 and 1912 for passes?

Mr. CARLETON. We began with 1913 first and reported on the matter and waited for further instructions as to continuing with 1911 and 1912, inasmuch as it had consumed so much time with the men for the one year on which we were working.

Mr. STONE. You concluded that would be a fair sample?

Mr. CARLETON. I know nothing further than that was all the further we were instructed.

Mr. STONE. The reports you made to the commission formed the basis for the commission's report on passes to the senate of July 7, 1914, did they not?

Mr. CARLETON. I can not answer you, Col. Stone.

Mr. STONE. Well, you have read the report to the senate.

Mr. CARLETON. I made my report to Mr. Sweeney, who is head of the division of accounts. Further than that I could not say.

Mr. STONE. You are familiar with the report made by the commission to the senate July 7, 1914, on passes, are you not?

Mr. CARLETON. Yes, sir.

Mr. STONE. Are there any errors in that, so far as dates and amounts are concerned?

Mr. CARLETON. So far as I know, there are not; I have not checked it up personally.

Mr. STONE. Would you not say that your reports, then, from your force at Louisville and Nashville formed the basis for that report?

Mr. CARLETON. Undoubtedly I should think possibly so; but for the full report I would not be able to state.

Mr. STONE. I notice this clause in the commission's said report, on page 1: "The results for this one year"—meaning 1913—"apparently so fully reveal prevailing conditions in this respect that we doubt the necessity of covering the years 1912 and 1911." Would you not judge from that that the commission deemed the other two years as being unnecessary to be investigated, and that this for 1913 formed an example of conditions of the two companies?

Mr. CARLETON. I would judge from reading that that that was the opinion of the commission.

Mr. STONE. The two companies furnished you and your forces full and unlimited access to all the pass records, did they not, and the requests for them for this year, in so far as you wanted to examine them?

Mr. CARLETON. With a certain restriction that, of course, I could not tell—I might say that is practically so. There were some, though, that we could not tell as to the requests, whether we got the entire file of requests, because they were not handed to us as we asked for them until they had been thoroughly gone over by the representatives of the carrier.

Mr. STONE. So far as the Louisville & Nashville Railroad are concerned, were you not told by myself to look into everything pertaining to passes for these years?

Mr. CARLETON. Yes, sir, Col. Stone, I was; but Mr. Warfield was instructed not to turn over any of the pass requests to me until the files had been gone over by him; and, as he stated, if there was anything there he did not want me to see he would take it out. I do not know whether there was or not.

Mr. STONE. You have no knowledge that anything was removed from the files?

Mr. CARLETON. No, sir; because I did not see them.

Mr. STONE. You made a pretty full selection, did you not, in these books that you have selected letters from and made copies from?

Mr. CARLETON. In what way do you mean a full selection?

Mr. STONE. I say you have selected types of different classes of requests.

Mr. CARLETON. Yes, sir.

Mr. STONE. You aimed to make those full and fair, did you not?

Mr. CARLETON. Yes, sir.

Mr. STONE. Of all classes of passes?

Mr. CARLETON. Classes of passes only to public officials, United States Senators, public officials, and newspapers, and other people—well, as we term it, unclassified. It would be simply complimentary, and we would not know who the individual was.

Mr. STONE. Touching the newspaper situation, let us examine into that a little. Take the Louisville & Nashville passes. I note from this report of the commission, based on your reports, that the newspaper representatives got this number of passes for 1913, 2,631, the mileage of which, as you report it, was 1,119,060 miles, the value of which you report as $32,246.70. Those figures are correct, are they?

Mr. CARLETON. I could not tell that until I verified it with my report.

Mr. STONE. Well, I want to know.

Mr. CARLETON. You have my reports in evidence there that I would like to see.

Mr. FOLK. What do you wish?

Mr. CARLETON. I would like 373A, the Louisville & Nashville.

Mr. STONE. Have you not it there?

Mr. CARLETON. No; I turned them all in; but I would be safe in saying that those were the commission's figures.

Mr. Stone. Now tell us from your own report the number of passes the newspapers got from the Louisville & Nashville Railroad in 1913.

Mr. Carleton. The report of passes issued to or on account of the newspaper representatives during the year 1913 totaled 2,631 passengers, representing a mileage of 1,119,060 miles, value of $32,246.70.

Mr. Stone. Now, what percentage is that value approximately of the total value of the passes issued by the Louisville & Nashville Railroad for 1913? You report the total at $130,839.65. About one-fourth, is it not?

Mr. Carleton. Yes; practically.

Mr. Stone. Well, now, while we are at it, turn to the newspaper figures for the same year showing the number of passes issued to them by the Nashville, Chattanooga & St. Louis Railway and the value and the mileage as reported by you.

Mr. Carleton. 372A. The Nashville, Chattanooga & St. Louis Railroad for the year ending December 31, 1913, passes issued to or on account of newspaper representatives were 1,310, representing 348,738 miles of a value of $10,006.56.

Mr. Stone. Turn to one of the exhibits you have offered in evidence; I think it is 373A.

Mr. Carleton. If that is the details of the passes?

Mr. Stone. Yes.

Mr. Carleton. Yes, sir.

Mr. Stone. Now, tell the chairman what you find on page 100 of that exhibit and read it to the chairman.

Mr. Carleton. Page 100 of this 373A I do not believe, Colonel; that is what you have reference to. Do you want the newspaper?

Mr. Stone. Yes. Tell us how many card passes and how many trip passes the Nashville Tennessean and American, or whatever it is, got from the Louisville & Nashville Railroad, I mean the paper owned by Senator Lea, for 1913.

Mr. Carleton. I do not know the name of the paper owned by Senator Lea. Do you mean the Tennessean and American at Nashville?

Mr. Stone. Yes. And while you are at it, just read us the names of who got passes belonging to that paper. I think that Gov. Folk overlooked it, maybe.

Mr. Folk. They are all in the record.

Mr. Stone. Yes; but it is well enough to bring attention to some things once in a while.

Mr. Folk. A great many things, if we had the time, we could bring attention to in this case. You will find the letters in the exhibits of the letters read this morning.

Mr. Stone. We have got them here.

Mr. Carleton. You asked me for the annuals, and they are in two separate parts.

Mr. Stone. Just read them separately, then.

Mr. Carleton. This is a list of annual and term passes issued on account of the Tennessean and American at Nashville:

J. H. Allison; then one blank card of the Nashville Tennessean and American; two in favor of the Nashville Tennessean and American.

Mr. Stone. How many altogether?

Mr. Carleton. Three altogether.

Mr. Stone. Those are annual passes?

Mr. Carleton. Annual passes, and which were used 108 miles. $3.24 worth of travel.

Mr. Stone. That is, so far as you could discover?

Mr. Carleton. Yes.

Mr. Stone. Those that traveled on those annuals might not have had their mileage recorded any more than any other man holding an annual?

Mr. Carleton. No.

Mr. Stone. You could not tell about that?

Mr. Carleton. No; I only show what the records on file in the carrier's office show.

Mr. Stone. Turn to the trip passes and see how many the Tennessean and American got of them and the names of those who got them.

Mr. Carleton. T. H. Alexander, 1; J. H. Allison, 1; Mr. W. T. Barry, 1; W. T. Batey, 4; Carl Brimhall, 6; James Burns, 8; H. Carl, 1; E. F. Caruthers, 1; Sam Caruthers, 1; S. L. Caruthers, 2; R. J. Cowan, 2; I. G. Dreyfuss, 2; H. W. Eskridge, 1; E. A. Fusch, 1; George W. Geiger, 2; D. W. Hays, 6; Mrs. D. W. Hays, 1; Mrs. Webb Hays, 2; Robert Henry, 1; J. E. Huddleston, 1; Mrs. S. B. Johns, 2; J. R. Johnson, 5; V. J. Kindel, 23; G. E. Matlock, 33; C. R. Morrow, 1; J. R. Peden, 1; W. W. Pique, 2; A. J. Shirley, 3; Leslie Stewart, 1; L E. Stewart, 1; Kenneth Taylor, 1; F. M. Vistal, 5; Marvin Wiles, 1; total number of passes issued, 102.

Mr. Stone. One hundred and two trip passes?

Mr. Carleton. One hundred and two trip passes.

Mr. Folk. During what year?

Mr. Carleton. During the year ending December 31, 1913.

Mr. Stone. You do not know how many they got in previous years?

Mr. Carleton. No.

Mr. Stone. Now, have you got a similar book for the Nashville, Chattanooga & St. Louis Railway?

Mr. Carleton. Yes, sir.

Mr. Stone. I wish you would turn to that while we are at it and see how much that amounts to—I mean for the Nashville Tennessean and American, whatever it is called.

Mr. Carleton. I understand.

Mr. Stone. For 1913. First, give the card passes or annuals.

Mr. Carleton. Annual or term passes issued to the Tennessean at Nashville for the year 1913: Mr. J. H. Allison, one, and three passes to one representative each—it is marked one representative; and there were three of those, making a total of four altogether; that is, of the annual or term passes.

Mr. Stone. That annual was just as liable to go where they pleased in the State?

Mr. Carleton. Within the prescribed territory of the pass. It was not outside the State; but I could not state until I looked at the detailed record whether it was confined to certain territory in the State or not.

Mr. Stone. You have no reason to think it was, have you?

Mr. Carleton. No.

Mr. Stone. Turn to the trip passes issued at the instance of that paper in the same year.

Mr. Carleton. You want the names?

Mr. Stone. Just give the names and number of passes they got from the Nashville, Chattanooga & St. Louis Railway.

Mr. Carleton. This is the list of trip passes issued to or on account of the Tennesseean and American at Nashville during the year 1913.

Mr. Stone. By the Nashville, Chattanooga & St. Louis Railway?

Mr. Carleton. By the Nashville, Chattanooga & St. Louis Railway: W. T. Batey, 12.

Mr. Stone. A little louder. I want everybody to hear it.

Mr. Carleton. W. T. Batey received 12; Mrs. W. T. Batey, 1. Morgan Blake and W. L. Higginbotham received 1; that was a joint pass, issued to two. Mrs. J. H. Bomar received 1; Carl Brunhall received 5; James Burns received 10; W. W. Burton received 1; Mrs. A. H. Carney received 1; Mr. E. F. Caruthers, 1; E. G. Cherry, jr., 1; Paul Christian, 1; Eugene T. Clark, 1; Mrs. Eugene T. Clark, 1; R. B. Clark, 2; C. W. Cornforth, 11; Mrs. C. W. Cornforth, 2; R. J. Cowan, 2; T. G. Dreyfus, 1; N. H. Dye, 26; H. W. Eskridge, 2; Jason Futrell, 1; George Geiger, 1; Miss Jessie D. Harmon, 1; F. G. Hay, 2; Mrs. Webb Hays, 1; George Hiland, 1; E. T. Horn, 2; Miss Irene Jackson, 2; Mrs. T. I. Jackson, 1; J. R. Johnson, 4; Miss Maud Kindel, 1; V. J. Kindel, 23; L. C. Law, 1; J. F. McCloud, 1; G. E. Matlock, 1; H. B. Morrow, jr., 1; H. B. Morrow and daughter, 1; W. R. Neudecker, 1; Carey Orr, 1; H. L. Parman, 1; W. W. Pique, 2; Mrs. W. W. Pique, 2; Miss Clara D. Preston, 2; W. B. Shepard, 1; Mrs. W. B. Shepard, 1; A. J. Shirley, 6; L. E. Stewart, 1; H. W. Tanksley, 1; F. M. Vestal, 6; O. H. Walker, 1.

Mr. Stone. What is the total?

Mr. Carleton. Well, it is not footed here.

Mr. Stone. Does it not run over further?

Mr. Carleton. No; that is all.

Mr. Stone. I wish you would foot that up.

Mr. Carleton. The total is 156.

Mr. Stone. Trip passes?

Mr. Carleton. Yes, sir.

Mr. Stone. To the Nashville Tennesseean and American?

Mr. Carleton. Tennesseean and American.

Mr. Stone. For one year?

Mr. Carleton. Yes.

Mr. Stone. That is the same year—1913—this senate resolution was introduced, is it not?

Mr. Carleton. I do not remember whether the resolution was introduced in 1913 or 1914. I am not familiar with the resolution.

Mr. Stone. Now, Mr. Carleton, you have another book here that you have given—that is, the samples of requests—for the Louisville & Nashville. I would like to have you turn to it.

Mr. Carleton. This is the one I think is in evidence. Yes; this is it. Is that what you have reference to [indicating]?

Mr. Stone. Yes. Now, turn and read what you find on page 100 of that book. What is the style of that exhibit?

Mr. Carleton. Our report 373B—Appendix B, as we call it. This is Exhibit 2.

Mr. STONE. Read what you find on page 100.

Mr. CARLETON (reading):

NASHVILLE TENNESSEAN AND THE
NASHVILLE AMERICAN (combined Sept. 24, 1910),
OFFICE OF THE PUBLISHER,
June 28, 1912.

Mr. JOHN BELL KEEBLE,
District Counsel L. & N. Ry., City.

DEAR SIR: We would appreciate your issuing to us book of trip transportation in renewal of the one issued at the beginning of the year.

Thanking you in advance for this courtesy, we beg to be,

Very truly, yours,

HERMAN SUTER, *Publisher.*

R. R. to J. G. Cisco. J. B. K.

Mr. STONE. Turn over to page 99 and see if you can find an answer to it.

Mr. CARLETON. "July 1, 1912"—no.

Mr. STONE. That is right; go ahead.

Mr. CARLETON. That is addressed to you, Col. Stone. It says, "Hon. H. L. Stone."

Mr. STONE. I do not care if it is. Read on.

Mr. CARLETON (reading):

DEAR SIR: The Nashville Tennessean has called on me for another book of representative trip passes, which I recommend be issued. They are to be countersigned by Herman Suter. Mr. Suter is publisher. The representative card passes held by that paper are R–42 and R–43.

Yours, truly,

——— ———, *District Attorney.*

Mr. STONE. Turn to 101. Read that outline.

Mr. CARLETON (reading):

CENTRAL SOUTH'S FIRST DAILY NEWSPAPER.
NASHVILLE TENNESSEAN AND THE NASHVILLE AMERICAN,
BUSINESS OFFICE,
Nashville, Tenn., January 3, 1913.

Mr. J. G. CISCO,
Vanderbilt Building, City.

DEAR MR. CISCO: Please accept our hearty thanks for furnishing us with the two representative card passes R #39 and R #40, and one book of trip passes. The favor is immensely appreciated and we will be pleased to reciprocate at any time.

Wishing you a bright and prosperous new year, we are,

Yours, truly,

THE TENNESSEAN AND AMERICAN.
J. H. ALLISON, *Business Manager.*

Mr. STONE. What is the date of that?

Mr. CARLETON. That is January 3, 1913.

Mr. STONE. Mr. Carleton, in the commission's preliminary report to the Senate, to which I have already called your attention, dated July 7, 1914, on this matter of passes, you make one classification under the head of attorneys.

Mr. CARLETON. Yes.

Mr. STONE. Will you turn to your report and state the number of passes, the mileage they were used on, and the value of that class of passes as you reported to the commission for the Louisville & Nashville Railroad for 1913?

Mr. CARLETON. For the Louisville & Nashville Railroad for the year 1913, attorneys, number of passes, 1,402; mileage, 874,341 miles; value, $24,520.32.

Mr. STONE. What attorneys were those; attorneys for the railroad company?

Mr. CARLETON. Those were issued to attorneys, so-called attorneys, for the railroad company, whose compensation was either nothing a year, except the transportation, or a very, very minimum salary, and I have a statement of that. It does not include any of your recognized—that is, I do not mean recognized, but any of your attorneys who devote substantially their entire time or the major portion of their time to the business of the company.

Mr. STONE. That class is left out?

Mr. CARLETON. That class is left out.

Mr. STONE. But all other attorneys, although regularly employed, are paid fees and retained by the company, as its attorneys are included in these passes that you have reported under the head of "attorneys."

Mr. CARLETON. That includes all of the passes issued in the name of an attorney. I have not seen any contract with them or anything of that nature, that either do not appear on the pay roll or paid by vouchers, or, if so, it is at a very nominal amount, say, $5 a year, or only a fee when they rendered services.

Mr. STONE. Did you ascertain and find out whether these were retained by the road and paid fees? Did you ask the head of the law department or anyone else to get the facts?

Mr. CARLETON. We did not ask for any contract, because we had examined all of the contracts on file with the carriers, and we found none that were with their attorneys, so we examined the pay rolls and examined all of the vouchers, but there were no contracts with the attorneys.

Mr. STONE. Did you include any attorneys in this list, who were paid fees by the company and recognized as its regular attorneys, although not paid a salary?

Mr. CARLETON. I am under the impression we included some few that had a minor fee, but I could not tell until I saw my original figures.

Mr. STONE. Was it your construction of making up this report about passes that every attorney who did not devote substantially all of his time to the service of the company by whom he was employed was not entitled to a pass?

Mr. CARLETON. I did not get your question.

(The question was read as above recorded.)

Mr. CARLETON. I did not place any construction of that kind. It was merely a matter of information that we were giving as examiners to the commission. In the progress of our investigation showing such attorneys as did not appear to be devoting their full time to the services of the carrier as shown by the pay rolls and vouchers.

Mr. STONE. Do you mean to say you classed an attorney that did not appear on the pay rolls or receive a salary as one not entitled to a pass?

Mr. CARLETON. I am not saying we drew any conclusion as to who was or was not entitled to a pass. We simply reported those. If an attorney received a pass——

Mr. **Stone**. Then you do not intend the commission or the public to understand that this large number of passes issued to attorneys were issued to attorneys on the outside that were not employed by the railroad company in any capacity to render service in a legal way. They are not outside attorneys, are they?

Mr. **Carleton**. They are, most of them, from what I could find, regular practitioners that are practicing in a general practice, that receive a pass from the carrier as a retainer fee.

Mr. **Stone**. Is there anything wrong about that?

Mr. **Carleton**. I am not passing on that. I do not state.

Mr. **Stone**. Were not these passes plainly stated right after the attorney's name: did it not show that they were attorneys for the company?

Mr. **Carleton**. The records show attorney.

Mr. **Stone**. For the company?

Mr. **Carleton**. Just attorney. It probably said "Company attorney."

Mr. **Stone**. Do you consider those free passes to that class of attorneys—in making up your report, I mean?

Mr. **Carleton**. In making up this report we included it as free passes to the attorney.

Mr. **Stone**. That is what I am getting at.

Mr. **Carleton**. Yes, sir.

Mr. **Stone**. How much mileage did you show? I think you gave that.

Mr. **Carleton**. I gave that.

Mr. **Stone**. You foot up that that class of attorneys employed by the company used passes of the value of $24,520.32, do you not?

Mr. **Carleton**. Yes, sir.

Mr. **Stone**. And that is about one-fifth of the total amount of free passes you set out in your report, is it not?

Mr. **Carleton**. Yes, sir; a little less than one-fifth.

Mr. **Stone**. Now, turn to the Nashville, Chattanooga & St. Louis attorneys. I suppose you classed them in the same way?

Mr. **Carleton**. The same rule applied as to the Nashville, Chattanooga & St. Louis.

Mr. **Stone**. Tell us how many passes you put into the total number on account of the attorneys of the Nashville, Chattanooga & St. Louis Railway for 1913, the mileage covered, and the value you put on it.

Mr. **Carleton**. Nashville, Chattanooga & St. Louis Railway passes issued at the request of company attorneys that are not considered as devoting substantially their entire time to the service of the carrier: There were no annual passes issued; there were 218 trip passes and 2 other forms, evidently mileage books. The total mileage traveled was 46,747; value, $1,358.40.

Mr. **Stone**. You have that all wrong or this commission's report is wrong. The commission reports in this special report of the 7th of July, 1914, the total number of passes to attorneys on the Nashville, Chattanooga & St. Louis Railway for 1913, 291.

Mr. **Carleton**. I beg your pardon, Col. Stone. I read "at the request of" only. I got the wrong recapitulation.

Mr. **Stone**. Well, it is granted. I thought you had gotten hold of the wrong data there.

Mr. CARLETON. That which I gave before was at the request of the attorneys. Now, the passes issued to and at the request of company attorneys not considered as devoting substantially their entire time to the service of the carrier for the year 1913——

Mr. STONE. How many passes?

Mr. CARLETON. Two hundred and ninety-one passes, involving 153,261 miles, or $4,442.81. Does that agree?

Mr. STONE. Now, those attorneys who do not devote all or substantially all their time to the service of the company, although employed by the company, is that it?

Mr. CARLETON. We presumed they were employed by the company inasmuch as they received a pass.

Mr. STONE. You have no reason to doubt it?

Mr. CARLETON. No.

Mr. STONE. Do you not know that a railroad company employs most all of its attorneys, who are engaged in general practice and who do largely more service for other people than for the railroad company and perform also for the railroad company the principal and most important services it has to do in a legal line and not on a salary?

Mr. CARLETON. I thought those that performed the most important duties were carried on their pay rolls. That was my impression.

Mr. STONE. If that is not correct, you were then mistaken?

Mr. CARLETON. Yes, sir.

Mr. STONE. Is that right?

Mr. CARLETON. Yes, sir.

Mr. STONE. Do you not know many of the attorneys of a railroad company are paid according to their services a reasonable fee for what they do?

Mr. CARLETON. Yes, sir.

Mr. STONE. Have you ever thought of that?

Mr. CARLETON. Yes, sir.

Mr. STONE. Yet do not use up all their time, or even substantially all of their time, for the company. Is there anything in the act to regulate commerce that confines this matter of issuing free passes to attorneys who devote all their time, or substantially all their time, to the service of the company by whom they are employed?

Mr. CARLETON. I think the act provides that company attorneys are entitled to free transportation; but as a matter of information, in making the investigation we wished to show what transportation was issued to company attorneys who were not employed or devoting substantially their entire time, so that the commission would have such information as it might wish in passing on or what was a company attorney and what was not. Simply because the carrier said that a man was a company attorney was a question as to whether or not he was so in fact, or merely nominally so. It was simply as a matter of information.

Mr. STONE. That would be a fraud and violation of law, if we issued a pass to a lawyer as the attorney of the company when he was not, would it not?

Mr. CARLETON. I would think so.

Mr. STONE. You have no reason to believe that any of these passes you have classed under the head of attorneys were of that character, have you?

Mr. **Carleton.** Well, the fact that they were issued, a large number of them, to attorneys who received no compensation, even as a salary or as fees, and that the pass itself was all that they got, would lead me to doubt, possibly, whether or not they could or would be construed as a real bona fide company attorney any more than——

Mr. **Stone.** There were very few that received only passes as their compensation, were there not, so far as the Louisville & Nashville Railroad was concerned?

Mr. **Carleton.** There were quite a number of them who received only——

Mr. **Stone.** But, practically speaking, they were a small number, were they not?

Mr. **Carleton.** No; I think not. I would not say they were a small number.

Mr. **Stone.** Do you know of any provision in the act to regulate commerce that prevents a carrier from compensating an attorney with a pass?

Mr. **Carleton.** No; I do not recall any.

Mr. **Stone.** Have you examined the pass transactions of any other railroad companies in your experience as an examiner for the last seven years, I believe you said?

Mr. **Carleton.** No, sir; I have not worked on the passes on any of the other carriers. My examinations did not include any of the pass issues.

Mr. **Stone.** You do not know how they conduct their business in that respect?

Mr. **Carleton.** Only in just a general way.

Mr. **Stone.** You do not, then, of course, know how they issue passes to their attorneys?

Mr. **Carleton.** Not from a direct examination of their records.

Mr. **Stone.** In this investigation, you have not gone outside of two companies to investigate, have you—the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway?

Mr. **Carleton.** In this pass investigation?

Mr. **Stone.** Yes.

Mr. **Carleton.** No, sir.

Mr. **Stone.** You did not investigate the Southern?

Mr. **Carleton.** No, sir.

Mr. **Stone.** The Illinois Central?

Mr. **Carleton.** No.

Mr. **Stone.** The Tennessee Central?

Mr. **Carleton.** No.

Mr. **Stone.** The Yazoo & Mississippi Valley in this State?

Mr. **Carleton.** No, sir.

Mr. **Stone.** Or any other companies that operates a line in this State or in Kentucky, did you?

Mr. **Carleton.** No, sir.

Mr. **Stone.** You had enough to do for these two, had you not?

Mr. **Carleton.** It kept me pretty busy.

Mr. **Stone.** In your investigation about passes issued by these two companies, did you include any surgeons in this list of passes to various other persons?

Mr. **Carleton.** No, sir; I do not believe we included any company surgeons.

Mr. STONE. Did you include any other employees?

Mr. CARLETON. I would like to see my report before I answer that affirmatively, if I may.

Mr. STONE. You can reserve that, unless you can do that right away.

Mr. CARLETON. I can do that right away. This was two years ago. [After examining papers.] No, sir; we did not include any company surgeons.

Mr. STONE. And no other employees of the company?

Mr. CARLETON. No, sir.

Mr. STONE. Now, suppose one of these legislators, either a senator or representative, either in Tennessee or in Kentucky, was an attorney of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway, how would you class a man of that sort?

Mr. CARLETON. We classed him as a legislator or public official, whatever his capacity was.

Mr. STONE. Although he was entitled to a pass as attorney for the company?

Mr. CARLETON. If he was an official, we classed him as an official, but I do not remember of any that were.

Mr. STONE. You did not make any inquiry about that?

Mr. CARLETON. No; we just——

Mr. STONE. In making up this pass list of those that you class as various other persons, did you or your fellow examiners, either with respect to the work done here at Nashville or at Louisville, go to the trouble of finding out whether any of those other persons were exempt under the act to regulate commerce, and entitled to passes under that act, as well as any State act bearing on the subject.

Mr. CARLETON. We did on the Nashville, Chattanooga & St. Louis Railway. I think every pass that was issued we made an inquiry as to who and what he was; but on the Louisville & Nashville Railroad we did not, because the requirements of the commission are that you should show on your pass stub the reason or why the pass was requested or given, and they were all shown as complimentary, and we did not find any of the these people as officials in any of the State offices or company offices, and they were not shown as employees, therefore we assumed they were gratuitous passes to others who could not be classified under the other heads. They were shown as various others.

Mr. STONE. Did you undertake to make any classification as between interstate and intrastate transportation covered by these passes?

Mr. CARLETON. You mean to find out whether they were used as interstate or intrastate?

Mr. STONE. To find out—did you make any distinction in classifying these passes that the commission based its report on to the Senate as between the two classes of commerce, intrastate or interstate?

Mr. CARLETON. If there was any party that received a pass the records of which showed that he was entitled under the act to receive transportation we did not include it, where there was no question. This only included such persons as under the act who were not entitled to transportation, barring or with the reservation of those so-called company attorneys, and they were listed as company attorneys not substantially devoting their entire time. We took any of those that were intrastate. We have not included any interstate passes that have been issued.

Mr. STONE. You have not included any of them?

Mr. CARLETON. No. Any person entitled under the act to receive transportation was not included, even though he may have used only intrastate.

Mr. STONE. My question really led to this, Mr. Carleton: Where a person was entitled under the act to regulate commerce to use a pass and have one issued to him by a carrier, you did not make any classification or find out that state of facts, did you, when you were accumulating your reports as to intrastate passes; although, in other words, a man could get an interstate pass under the provisions of the law regulating commerce and was issued a State pass inside of the lines of a State—you did not go into that minutia to find out that condition, did you?

Mr. CARLETON. We left him out.

Mr. STONE. What?

Mr. CARLETON. We left him out.

Mr. STONE. How were you able to determine that?

Mr. CARLETON. Because we assumed this way——

Mr. STONE. You did what?

Mr. CARLETON. We assumed in this instance—let me go back and put it this way: Wherever the records of the carrier showed, as the requirements of the commission provide, the reason for the issuance of the pass—that is, the occupation—whether he was an employee, and, if so, what nature of employee, or that he was a minister of the gospel or any of those privileged under the act to receive transportation, and it is so shown on the records, we left them out, regardless of the fact that it might be interstate or intrastate. But where a person received an intrastate pass and he was not classified and the information was not given as provided by the act to regulate commerce——

Mr. STONE. On the stub books of the company?

Mr. CARLETON. On the stub books or on the records of the annual-pass issues we classified him as other persons.

Mr. STONE. Then you applied the interstate rule to the intrastate passes.

Mr. CARLETON. Yes, sir.

Mr. STONE. Is there any law against issuing passes in Kentucky to anybody—intrastate passes?

Mr. CARLETON. I have been informed by Mr. Warfield that there is a law that has been passed this last year, effective January 1, 1917.

Mr. STONE. Well, we all understand that; but I am talking about a law in force. That does not take effect until January 1 next.

Mr. CARLETON. No others, as I understand. I think it is section 191 of the State constitution of Kentucky prohibits the issuance of passes to any person not an employee of the carrier, or from receiving one, but it leaves it to the legislature to enforce the statute.

Mr. STONE. You are quoting that from recollection, are you not?

Mr. CARLETON. Well——

Mr. FOLK. Have you a copy? Just read it.

Mr. STONE. Is it not a fact that only relates to officers, and takes an act of the legislature to put it in force?

Mr. Carleton. It takes an act.

Mr. Stone. And they just passed one last year, although that has been the constitution of the State of Kentucky for 25 years. They are just beginning to pass a law under it; is not that a fact?

Mr. Carleton. That is my impression, that it has been in the constitution ever since there was a constitution.

Mr. Stone. There is no law against intrastate passes in Tennessee, is there?

Mr. Carleton. I think not.

Mr. Folk. I do not think that is a proper question.

Mr. Stone. How is that?

Mr. Folk. You are asking the witness for his legal opinion as to whether there is a law or not.

Mr. Stone. Well, you asked these legislators their legal opinion, and some of them were farmers, and you asked them whether there ought to be a free-pass law or antipass law.

Mr. Folk. I was asking for their opinion, whether there ought to be a law or not. But you are asking the opinion of this witness as to whether there is a law.

Mr. Stone. You do not object to that question, I suppose, after all you have asked these other witnesses?

Mr. Folk. I am calling attention to the fact, Col. Stone, that you are asking this witness to tell you whether or not there is a law in Tennessee. So far as an antipass law is concerned, there is no controversy. There is no antipass law as such.

Mr. Stone. You admit that?

Mr. Folk. But under the discrimination section of the statute that is a question of argument, whether it would apply or not.

Mr. Stone. Yes; that is true. We agree about that. How about Alabama?

Mr. Carleton. I am not acquainted with the State laws of Alabama.

Mr. Stone. Alabama has the same sort of a law as the act to regulate commerce, has it not—the same exemptions?

Mr. Carleton. I do not know. I am not acquainted with the law.

Mr. Stone. How about the laws of other States?

Mr. Carleton. I think Mississippi has a law, judging from the correspondence that I read here, in which mileage books were issued in lieu of advertising, where you called Mr. Mapother's attention to it and requested him not to do it.

Mr. Stone. How about Louisiana?

Mr. Carleton. I think so, in the same way, but I am not familiar with any of the laws of the Southern States as to that feature.

Mr. Stone. How about Florida and Georgia?

Mr. Carleton. I am not familiar with any of them.

Mr. Stone. Did you include Georgia in your report?

Mr. Carleton. I did, if there were any interstate passes issued in Georgia to people not entitled to them under the interstate-commerce act.

Mr. Stone. Did you include Virginia and North Carolina?

Mr. Carleton. I read all of the States once before at your request, and I can not recall now. I have not the record before me, but it is a matter of record, as I read. I read all of those.

Mr. **Stone**. You do not mean to say, in making up this report about the interstate and intrastate passes, that these companies, or either of them, have violated any interstate law in doing so?

Mr. **Carleton**. I did not state anything on that fact one way or the other. I simply reported the passes we found as being issued.

Mr. **Stone**. You did not pass upon their validity?

Mr. **Carleton**. It is not my position to pass upon the validity of anything.

Mr. **Stone**. And you do not mean to class them in your reports as invalid or against the law?

Mr. **Carleton**. No; simply as to the position they were in.

Mr. **Stone**. Is it not a fact that in making up your report of these passes, the number of them, etc., under the head of other persons, that in Tennessee, in the list of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, you included all these farmers that attend the farmers' institutes that were issued passes?

Mr. **Carleton**. If I recollect, those are given as a separate report. I do not think they are included in those various others.

Mr. **Stone**. You mean——

Mr. **Carleton**. But on the Louisville & Nashville Railroad, if there were any of those, they were included; but on the Nashville, Chattanooga & St. Louis Railway I think they made a special report. I would like to ask Mr. Keene.

Mr. **Keene**. They are included.

Mr. **Carleton**. They are included, yes.

Mr. **Stone**. Can you get the number of them and the mileage and the value of them?

Mr. **Carleton**. That is kept separately, is it not?

Mr. **Keene**. You can get them by picking them out.

Mr. **Carleton**. We have not them ready.

Mr. **Stone**. It would be a hard matter to pick out the farmers from the rest of the passes, I suppose.

Mr. **Carleton**. Yes.

Mr. **Stone**. You did include that?

Mr. **Carleton**. Yes.

Mr. **Stone**. You have no way of telling the commission how many of that class there were issued by either company?

Mr. **Carleton**. No, sir; simply because in a large majority of cases it would simply say "complimentary," and we had no way of differentiating in all cases those from anyone else. Were those issued on a special form of ticket, Mr. Keene?

Mr. **Keene**. They were issued on a special form of ticket, and the number is in the report. They were issued to the State capitol for distribution——

Mr. **Stone**. We can not hear you.

Mr. **Carleton**. Mr. Keene, who has conducted that particular portion of it personally, under my direction, states they are reported in the report; that they were not issued to the farmers, but to the State capitol for distribution; that is, they were issued on a special form for distribution.

Mr. **Stone**. The agricultural department?

Chairman Meyer. Would you mind asking those questions of Mr. Keene? He is right here and has direct personal knowledge of these particular things for Tennessee.

Mr. Stone. If he knows about it, I would take pleasure in doing that, if he is here.

Chairman Meyer. He is here.

Mr. Stone. Is this the gentleman?

Mr. Folk. Had you not better finish with Mr. Carleton, then we will put him on?

Mr. Stone. Are you going to put him on?

Mr. Folk. Yes.

Mr. Stone. Then, I will cross-examine him. I would rather you would claim and use your own witnesses.

How about transportation for charitable purposes, people who go to hospitals and infirmaries?

Mr. Carleton. Every one shown as issued for charitable purposes we left out, when the record showed it.

Mr. Stone. When it was not shown, you put them in?

Mr. Carleton. Because we did not know it.

Mr. Stone. Certainly; that is what I want to get at.

Mr. Carleton. Certainly.

Mr. Stone. You put those in unless some one marked what they had been given the pass for?

Mr. Carleton. Where the records were not kept in accordance with the commission's requirements, and we were unable to tell what they were given for, we put them in.

Mr. Stone. Where there was no law against it, it was perfectly right to give them?

Mr. Carleton. That is a question I am not competent to pass upon.

Mr. Stone. You know nothing in the laws of Kentucky or Tennessee to prevent that, do you?

Mr. Carleton. It is a question whether the commission has the power to prescribe the form in which the carriers shall——

Mr. Stone. I am not talking about the Interstate Commerce Commission. You mean the State commission?

Mr. Carleton. No; I am speaking of the Interstate Commerce Commission.

Mr. Stone. Have they any power to prescribe how a pass for intrastate trips shall be issued?

Mr. Carleton. I understand that the Interstate Commerce Commission has the power to prescribe the method and manner in which all carriers doing an interstate business shall keep their accounts and records and memoranda, regardless of the fact that they pertain to State or interstate business, so that the commission may be in a position to determine what is interstate and what is not.

Mr. Stone. While that is true now, Mr. Carleton, do you know of any regulation they have made or attempted to make requiring the carrier issuing intrastate passes to designate what that particular pass is for every time they issue one to anybody? Do you know of any regulation of the Interstate Commerce Commission of that character?

Mr. Carleton. The Interstate Commerce Commission has issued a regulation prescribing the form and method in which all issuance of passes shall be recorded.

Mr. Stone. But I am not talking about recording them.

Mr. Carleton. Well, I beg pardon.

Mr. Stone. Does not that regulation pertain to interstate passes?

Mr. Carleton. It pertains, as I read it, Col. Stone, to the record of all passes. I am not questioning the jurisdiction, I am not saying that the commission has jurisdiction over the issuance of the pass, but if it is issued I am under the impression that the commission has the power to say how you shall record that.

Mr. Stone. You are turning lawyer in this matter?

Mr. Carleton. That is my impression. You asked me the question——

Mr. Stone. No; I am asking you what they had prescribed as a regulation, and not your opinion of the law. Now, do you undertake to say that if a carrier in Tennessee or Kentucky shall issue a pass, say to John Jones, an intrastate pass, that the Interstate Commerce Commission has passed any regulation to control that pass and have him designated as to the ground on which it was issued, whether for charitable purposes, educational purposes, or to attend farmers' institutes, or anything of that sort?

Mr. Carleton. As I say, I am not a lawyer. Now you are asking for my legal opinion.

Mr. Stone. No; I am asking you if the Interstate Commerce Commission—you are one of its employees?

Mr. Carleton. Yes, sir.

Mr. Stone. And one of its chief employees, and have been in its employment for seven years, you say—if there is any such regulation about passes.

Mr. Carleton. The regulation, as I recall it, does not make any differentiation between interstate and intrastate passes, and refers to all passes issued by a carrier.

Mr. Folk. It refers to the records of the interstate carriers.

Mr. Carleton. It refers to the records of the interstate carriers and states plainly how they shall be kept. I am not saying that they have jurisdiction as to the right to issue, but if they do issue them, that they have the right to say how they shall record their issuance.

Mr. Stone. But the point I am trying to get at, if I can, with you is this, is there any regulation of the Interstate Commerce Commission that requires a carrier in issuing an intrastate pass to designate the cause of issuing it, the ground on which it is issued, the motive behind it?

Mr. Carleton. It requires that you shall show on what account the carrier issues the pass. If it is an employee, it states expressly how you shall show it, what information you shall show regarding the employee; or if it is in exchange to another carrier, what information you shall show as to the carrier in whose employ he is and the nature of the position held thereunder; and if for any other persons than that, the reasons therefor. I may not be exactly correct in the terms, but words to that effect. In fact, there is a copy of the commission's regulations here, if you care to have it read into the record.

Mr. Stone. Now, you interpret that to apply to both classes of passes, both intrastate and interstate?

Mr. Carleton. Yes, sir.

Mr. Stone. That is your interpretation?

Mr. CARLETON. Yes, sir; my interpretation is any pass issued by a carrier.

Chairman MEYER. Have you not the regulations there? That would be the shortest way to call Col. Stone's attention to it.

Mr. CARLETON. Yes.

Chairman MEYER. Mr. Colston probably knows that regulation by heart.

Mr. STONE. He may know it better than I do. I expect he is more familiar with it.

Mr. CARLETON. The regulations of the commission governing the issuing and recording of passes of steam roads, first issue, effective on January 1, 1912, provides on "Records of passes issued," section 34:

> Carriers are required to keep a full record of passes issued.
>
> 35. The record of annual or term passes issued shall be kept in a book record similar to Form 6 or on cards similar to Form 7.

Now, these forms provide for the following information: The book record is the date issued, the number of the pass, the pass number, to whom issued, showing the name and address, issued account of, the territory, the date of expiration, at the request of, and any remarks.

Now, under "Issued on account of," the following is a part:

> In the space provided for "Account" information must be shown in accordance with the following:
>
> If issued to an officer or employee, the title or occupation of person to whom the pass is issued.
>
> If issued to a member of the family of an officer or employee, the name of such officer or employee, his title or occupation, and the relationship of the person to whom the pass is issued. For example, "Wife of John Smith, brakeman."
>
> If issued to an officer or employee of another carrier, the title or occupation of the person to whom the pass is issued and the name of the carrier. For example, "Machinist, A. & B. R. R."
>
> If issued to a member of the family of an officer or employee or another carrier, the name of such officer or employee, his title or occupation, the relationship of the person to whom the pass is issued, and the name of the carrier. For example, "Wife of George Brown, clerk, accounting department, A. & B. R. R."
>
> If issued to persons other than common-carrier officers or employees or members of their families, there must be shown in this space the reason for the issuance of the pass.

Now, that is as to annual passes.

Now,

> The record of trip passes issued shall be kept on the stubs or carbon copies of trip passes. Full information must be shown on the stub or carbon copy of each trip pass, as provided on Form 2, and this information must conform to the data on the pass and coupon.

Now, Form 2 provides for the same information that is provided for on the annual pass, with the same restrictions.

Mr. STONE. You interpret that as applying both to intrastate and interstate passes?

Mr. CARLETON. That is my interpretation.

Mr. STONE. If the carrier should interpret it differently, and it is not binding on it, so far as intrastate passes are concerned, and it omitted to put the cause of issuing the pass to any person who received a pass from either of these companies and would class it so it was without any cause and as beyond the law——

Mr. **Carleton.** I classed that as various other persons.

Mr. **Stone.** Well, that is what I mean.

Mr. **Carleton.** Yes.

Mr. **Stone.** Although it might have been to charity, it might have been to a Confederate soldier, or to a sick person, or to a farmer going to one of these institutes to learn how to farm?

Mr. **Carleton.** We would have no information as to that effect, inasmuch as it was not shown.

Mr. **Stone.** What I want to get at is, you lumped all those passes in the one classification, "Other persons"?

Mr. **Carleton.** Yes; that is, the number of passes.

Mr. **Stone.** That is in the report you made?

Mr. **Carleton.** That we made.

Mr. **Stone.** In this investigation?

Mr. **Carleton.** Yes.

Mr. **Stone.** I want to ask you a little further about the passes that you did not establish, as you call it, by other reports, as showing they had actually been used. You do not mean to say that every pass that did not turn up and was not reported was actually used, do you?

Mr. **Carleton.** No, sir.

Mr. **Stone.** Is it not a fact that in the multitude of transactions of this kind many passes are lost or mislaid or destroyed, or voluntarily never used by the recipient of them?

Mr. **Carleton.** I can not state, Col. Stone.

Mr. **Stone.** You do not know about that?

Mr. **Carleton.** I do not know about that.

Mr. **Stone.** But in making up this report, if I understand you, you gave the burden of the whole situation to the carriers and charged them up with every mile that the trip pass covered and the value of it, at 3 cents a mile?

Mr. **Carleton.** No.

Mr. **Stone.** Whether it was used or not?

Mr. **Carleton.** We charged—the resolution called for the trip passes issued. We show the full number of trip passes issued. Then of those that we had the returned portions that were turned in, with the records showing conclusively by the surrender and the conductor's punch marks that it had been honored on the train, we reported the mileage used between those points as shown by the time-table, the value of that trip as shown by the tariff, whether it was—not applied to the full 3 cents or any rate, but the rate between the points as shown on the tariff, and that we showed as established. Then, we showed in the other column the amount of such passes as had been issued that had not been turned in to the carrier and indicated as having been used. We showed that.

Mr. **Stone.** How did you indicate it?

Mr. **Carleton.** I say that had not been turned in. Now, if we found a pass that was written out and issued and had been returned and placed in the file again——

Mr. **Stone** (interposing). Well, that was accounted for.

Mr. **Carleton.** Accounted for and had not been used, we did not include it.

Mr. **Stone.** Boiling down all you have said, does it not amount to this: You charged the carriers up with those that had been used and returned, those not used, and also with those that had not been returned whether you knew whether they were used or not?

Mr. Carleton. Yes, sir; as a separate distinct check.

Mr. Stone. Well, you put that in the aggregate, however?

Mr. Carleton. Yes, sir.

Mr. Stone. In the mileage and in the value you gave to them.

Mr. Carleton. Of the passes issued, that is the question, as I understood it. It was the number of passes issued and the value thereof.

Mr. Stone. You made no separation in your report to the commission?

Mr. Carleton. Yes, sir.

Mr. Stone. But the commission does not make any separation, does it?

Mr. Carleton. If it is not on that, I can not say. It has been so long since I read that report, I do not know whether they made the separation or not.

Mr. Stone. Just those tables at the top of those inside pages, this is the Louisville & Nashville and this is the N., C. & St. L., and the total of all the passes and the mileage covered by the passes charged up to each one.

Mr. Carleton. This is as it states, Col. Stone; it is the number of passes issued and the number of miles which they were issued for or good for, and the value at the tariff rates.

Mr. Stone. And except as to these, the persons who received them have used them to the fullest extent.

Mr. Carleton. Yes, sir; excepting the annual passes, which, of course, we could only get the value of the actual use of those.

Mr. Stone. And except as to those which were returned and showed they had not been used?

Mr. Carleton. Yes; those were omitted. I do not know whether Col. Stone wished me to read the section of the constitution which referred to passes.

Mr. Stone. Just read it into the record.

Mr. Carleton. This is section 197 of the constitution of the State of Kentucky.

Mr. Stone. Adopted September 28, 1891?

Mr. Carleton. You know more about the date of adoption than I do.

Mr. Folk. Read it.

Mr. Carleton (reading):

> No railroad, steamboat, or other common carrier, under heavy penalty to be fixed by the general assembly, shall give a free pass or passes or shall, at reduced rates not common to the public, sell tickets for transportation to any State, district, city, town, or county officer or member of the general assembly or judge, and any State, district, city, town, or county officer or member of the general assembly or judge who shall accept or use a free pass or passes or shall receive or use tickets or transportation at reduced rates not common to the public, shall forfeit his office. It shall be the duty of the general assembly to enact laws to enforce the provisions of this section.

Mr. Stone. And they never saw fit to do it until the other day; that is a fact, is it not?

Mr. Carleton. And I am not familiar with the laws of Kentucky, and as I understand from Mr. Warfield in conversation recently, that was only passed recently.

Mr. Folk. You read this morning why?

Mr. Carleton. Sir?

Mr. Folk. Go ahead. I beg pardon.

Mr. Stone. I am through, but some of our associate counsel may wish to examine.

Mr. Colston. In ascertaining or estimating the value of these passes, I believe you stated you used 3 cents per mile for the reported travel on annual passes and the tariff rate for other passes; is that correct?

Mr. Carleton. Yes; that is correct.

Mr. Colston. Well, it is a fact, is it not, that the average mileage achieved on paid transportation in the State of Tennessee or Kentucky is not as high as 3 cents a mile?

Mr. Carleton. In computations which we made for 1913 of the total mileage performed on trip passes on which we were able to apply the direct tariff rates, knowing the point to and from which the transportation was used, taking the aggregate mileage at the actual tariff rate and dividing the total value of such passes by the mileage, we find that the average rate for the State of Tennessee was 3 cents a mile.

Mr. Colston. You arrived at that upon the assumption that for each trip pass the highest or basic rate of 3 cents per mile was charged, did you not?

Mr. Carleton. We were advised——

Mr. Colston. You evidently did not catch my first question. I said did you not know it to be a fact that the paid transportation—I did not say anything about your pass transportation on trip passes—but do you not know it to be a fact that the paid transportation in the States of Tennessee and Kentucky does not average as much as 3 cents a mile?

Mr. Carleton. The paid transportation in the State of Tennessee for those particular passes, trip passes which were issued, was 3 cents a mile.

Mr. Colston. Now, there was no paid transportation——

Mr. Carleton. Well, if the same people who used those trip passes had gone to the Louisville & Nashville office and bought tickets it would have cost them 3 cents per mile for the trip.

Mr. Colston. That is your assumption. Now, to prove the validity of that assumption I am asking you if you know what was the fact in the case of the people who actually did buy tickets, did the people who actually did buy tickets in the State of Tennessee and in the State of Kentucky pay an average of 3 cents a mile?

Mr. Carleton. If they did not, then they were violating the law and getting something for less than what your tariff provides for. I do not know as to that, as I have not checked up the account.

Mr. Colston. You say they were getting something less than the tariffs provide for?

Mr. Carleton. If they did not pay that much.

Mr. Colston. Do you know whether any round-trip rates are published in the tariff which are less than the one-way rate?

Mr. Carleton. If so, we included them in the round-trip rate. If a man got a pass from a point to a point and return, and you had tariffs in effect at that time in 1913 that provided for a lower round-trip rate than the straight one-way rate, we included it in here.

Mr. Colston. Did you do that with respect to your annual passes?

Mr. Carleton. No; the annual passes, as I said before, we were unable from the incompleteness of the records of the conductors to tell just where a party that started out on the use of an annual pass made his full complete trip, owing to the fact it was reported over two or three conductors' runs, and sometimes they would be intermediate, and so we could not tell when a man started out with an annual pass where he intended to go. So if there was a through rate to a point in a State we could apply that rate, so we applied the average as determined in this way.

Mr. Colston. I think we understand what you did with respect to trip passes, but I am trying to examine you now as to annual passes. I say, do you or do you not know what was the average rate per mile paid by all people in the States of Tennessee and Kentucky on intrastate transportation who paid for the tickets?

Mr. Carleton. No, sir.

Mr. Colston. Do you not know it is not as great as 3 cents?

Mr. Carleton. I do not know. I have not seen any of your compilation.

Mr. Colston. Do you not know that the average revenue per passenger per mile is not that high?

Mr. Carleton. I do not know what it is on the Louisville & Nashville Railroad, Mr. Colston.

Mr. Colston. Do you know what a passenger who travels from here to Franklin, Tenn., for example, 20 times during the month or during six months on a card pass, would have had to pay if he bought a 20-trip ticket?

Mr. Carleton. No, sir.

Mr. Colston. Don't you know that that is 2 cents a mile?

Mr. Carleton. I tell you I am not familiar with the passenger rate.

Mr. Colston. Then, when you said you applied tariff rates you meant that you applied the first-class unlimited highest basic tariff rates; is not that what you meant?

Mr. Carleton. No; now, you are speaking of annual passes?

Mr. Colston. Well, wherever you say you applied the tariff rate.

Mr. Carleton. Wherever we applied the tariff rate I referred to trip passes only, which provided for the rate to and from the point and return, if it was a round-trip ticket, as provided for the pass, just the same as if it had been a ticket that had been issued by an agent, for which ticket you would expect the agent to account for so much, as shown by your tariff; that is, for the trip passes.

Mr. Colston. That is, you assumed there are only two kinds of rates in Tennessee and Kentucky—an ordinary unlimited or first-class ticket and a round-trip ticket, such as is regularly issued as a round-trip matter.

Mr. Carleton. That was all that was ever issued on trip passes—was either one way or round trip.

Mr. Colston. Did you ever hear of there being any excursions in Tennessee or Kentucky under which a number of men would attend a United Confederate Veterans' reunion, say?

Mr. Carleton. We never apply any excursion rates, because we do not know whether he attended an excursion or not.

Mr. COLSTON. In your experience as an examiner of the Interstate Commerce Commission don't you know that when United Confederate Veterans travel in large numbers they generally travel under an excursion rate?

Mr. CARLETON. Well, I do not know about the South, but I presume so. That is the way they do in the North.

Mr. COLSTON. But yet you made no allowance for United Confederate Veterans traveling on a pass?

Mr. CARLETON. We did not know whether he was a United Confederate Veteran or not. It did not show anything of that.

Mr. COLSTON. And the same way if special rates have been made for farmers' reunions, if they had not traveled on passes, you did not apply any special rates or reductions in those cases?

Mr. CARLETON. No, sir.

Mr. COLSTON. In classifying these passes how did you classify passes which were marked "complimentary"?

Mr. CARLETON. Complimentary?

Mr. COLSTON. Yes.

Mr. CARLETON. If we were able by the public records to determine that such party held a public office—was a senator, representative, or held any such office, or held any State office or county office—we classified him as that particular office; other than that, we put them in as other persons.

Mr. COLSTON. If you did not know what they were, you put them in as other persons?

Mr. CARLETON. As other persons. That was the reason we had that particular column.

Mr. COLSTON. You got away from putting all passes issued for complimentary reasons into the other persons' column, if you knew for what they were issued?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. But if you knew they were issued for United Confederate Veterans or Volunteers entitled to transportation under the law——

Mr. CARLETON. What do you mean by "volunteers"?

Mr. COLSTON. State volunteers.

Mr. CARLETON. We did not include them in the first place.

Mr. COLSTON. You did not make any investigation to find out in the case of passes issued merely complimentary to a person whether or not he was entitled to it in that case, did you?

Mr. CARLETON. No, sir; not on the Louisville & Nashville Railroad. We did on the Nashville, Chattanooga & St. Louis Railway.

Mr. COLSTON. Therefore, so far as the Louisville & Nashville Railroad is concerned, you do not know how many of these excepted classes are included in that list of other persons?

Mr. CARLETON. No; those people for whom the record showed no information.

Mr. COLSTON. There is no rule in the pass rules issued by the commission even with respect to interstate passes which require if there are two reasons for issuing a pass, that both shall be shown, is there?

Mr. CARLETON. I do not know whether——

Mr. COLSTON. Does it not say the reason shall be shown for the issuance of the pass, except for——

Mr. CARLETON. There must be shown in this space the reason for the issuance of the pass. I do not know as you could issue a pass for two reasons at once.

Mr. COLSTON. Could not a man be an attorney for the Louisville & Nashville Railroad, and some one traveling in a charitable capacity at the same time, or in charge of the transportation of an invalid?

Mr. FOLK. Would he receive a charitable pass while he was an attorney for the Louisville & Nashville Railroad?

Mr. COLSTON. He would if his compensation consisted of one pass a year, possibly.

Mr. FOLK. He would be a subject of charity?

Mr. COLSTON. I did not have reference to one who would be a subject of charity, but one in charge of a subject of charity. He could do that; there is no regulation that you know of that requires——

Mr. CARLETON. There is no question——

Mr. COLSTON. If the laws of the State permit a complimentary pass to be issued, and that is a reason, there is no requirement even under the regulations of the Interstate Commerce Commission as applied to the State transportation which would require any other reason than complimentary to be shown, is there?

Mr. CARLETON. That is a question I am not competent to pass upon.

Mr. COLSTON. If there is, you know of no rule except to which you have referred before?

Mr. CARLETON. No.

Chairman MEYER. We will have an evening session at 8 o'clock, but this room will not be available, so we will meet in the loggia of the hotel at 8 o'clock. It will be necessary to take papers, etc., out of this room.

(Whereupon, at 5.30 o'clock p. m., a recess was taken to 8 o'clock p. m.)

EVENING SESSION.

WILL H. CARLETON resumed the stand for further examination, and having been previously sworn, testified further as follows:

Cross-examination continued:

Mr. COLSTON. Mr. Carleton, in the preliminary report of the commission to the Senate of the United States, in docket No. 6319, In re Financial Relations, Rates and Practices of the Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway, and other carriers, which appears in the thirty-first volume of I. C. C. Reports, beginning at page 261, the commission said with reference to the pass inquiry involved in that docket number, on page 264 of the report:

> In order to properly compile the required information, lists of pass holders in the various classes were prepared.

Are these lists of pass holders referred to therein the ones which you have just introduced?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. The commission also said in that report on the date last named:

> The examiners also compiled illustrative correspondence tending to show the motives which actuated recipients and givers in these pass transactions.

Are those the lists of correspondence which you have filed in this case?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. Who selected that correspondence?

Mr. CARLETON. I did on the Louisville & Nashville Railroad, and Mr. Keene on the Nashville, Chattanooga & St. Louis Railway, after I had looked them over.

Mr. COLSTON. As far as the Louisville & Nashville Railroad is concerned, you made that selection for the purpose of indicating motive, in your own judgment?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. Now, with respect to those lists, the commission says on the same page:

> Such lists reveal the manner in which these carriers have dipped into practically every domain of public and private life through the instrumentality of the free pass. There is scarcely a walk of life which is not represented in this procession of recipients of passes from the Federal bench to the local politician, and the sheriff who summons the jury. The threads represented by these passes tie thousands of citizens to the carriers through improper relations. The lack of morality reflected by the facts here compiled is a menace to the institutions of a free people. These citizens who sell their influence quite as much as though they accepted money bribes seem to be as willing to be tied as the carriers are ready to tie them.

Now, in compiling these lists which you have filed as part of the record in this case, and which you say are the lists referred to by the commission, and particularly in compiling that classification of those lists which relate to passes furnished other State officers, did you include in this list of moral delinquents, as stated or as called by the commission, any public officer, such as post-office inspectors and immigration inspectors?

Mr. CARLETON. If they received any transportation, it was so indicated.

Mr. COLSTON. It was?

Mr. CARLETON. If they received any, it was so indicated.

Mr. COLSTON. Well, don't you know that post-office inspectors of the United States Government do receive free transportation?

Mr. CARLETON. There was none that was issued by the carrier on a pass.

Mr. COLSTON. No transportation issued post-office inspectors?

Mr. CARLETON. I think that is on the Federal—I did not find any in the records of the carrier.

Mr. COLSTON. None issued to customs inspectors?

Mr. CARLETON. I did not find any.

Mr. COLSTON. Nor immigration inspectors?

Mr. CARLETON. I do not recall any immigration inspectors.

Mr. COLSTON. Or Railway Mail Service employees?

Mr. CARLETON. I do not recall any.

Mr. COLSTON. Now, is it not a fact that you did not include any of those because they are within excepted classes, as stated in section 1 of the act to regulate commerce?

Mr. CARLETON. If we ran across any of them that were issued, and they were under the excepted classes, we did not include them.

Mr. COLSTON. Therefore, if you found any passes issued to post-office inspectors, customs inspectors, and immigration inspectors, those being within the excepted classes named in section 1 of the act to regulate commerce, you did not include them in this blacklist?

Mr. CARLETON. If they are within the excepted class named in section 1 of the act to regulate commerce, we did not include them.

Mr. COLSTON. Upon what theory did you exclude them?

Mr. CARLETON. On the theory that we excluded everyone that is included in the excepted list under the act to regulate commerce.

Mr. COLSTON. That is a statement that you did a thing upon the theory that you did the thing; but why did you exclude them? The Senate resolution did not require you to do that, did it?

Mr. CARLETON. The Senate resolution——

Mr. COLSTON. The Senate resolution with respect to the thirteenth paragraph simply calls for the number of free annual passes, the number of free trip passes, the number of every kind of free passes issued by each of said railroads each year since January 1, 1911, to members of legislative bodies and other public officials or at the request of members of legislative bodies and other public officials; the total mileage traveled upon free passes issued under each of the above classifications, and the amount in money the free passes issued under each of the above classifications would equal at the regular rates for such service of each of the above-named railroads, without any provision that you should except anybody, because the laws of the United States may have said it was all right or moral to give passes to these people, the Senate resolution made no such exception, did it?

Mr. CARLETON. Apparently not; but I did not interpret it that way.

Mr. COLSTON. You interpreted it, then, that this exception in the act to regulate commerce excepted these men from any allegation or suspicion of moral turpitude, if they accepted passes; is that the idea?

Mr. CARLETON. No; my reason for excluding them was in setting down or omitting everyone from the compilation that came within the excepted list of the act to regulate commerce——

Mr. COLSTON. You are simply stating what you did. I know you did that, and you said you excepted these officials because they are in the excepted list. Why did you do that? The senate resolution did not ask you to except anyone. I ask you, did you except them because you interpreted the act to regulate commerce as indicating the rule of morality in such matters?

Mr. CARLETON. No.

Mr. COLSTON. Why did you do it? If these other public officials that received passes were placed upon the black list by you or upon the list that the commission says were guilty of all these heinous offenses and lack of morality and bribe-taking, why is it that you did not put these other officials on that the act to regulate commerce exempts? The senate resolution said nothing about them.

Mr. CARLETON. As I said before, merely for the reason that the act excluded them, and I did not take any one of them for that reason; that was the only reason.

Mr. COLSTON. Is it true that you adopted the act to regulate commerce as the code of morals in that respect which eliminated them?

Mr. CARLETON. Not as a code of morals.

Mr. COLSTON. Why did you adopt the act to regulate commerce? The senate resolution did not call for that.

Mr. CARLETON. I can give no other answer than that I——

Mr. COLSTON. Is not that the effect of what you did, that you omitted people from this list of officials that the commission accuses of taking bribes the same as money bribes, that you omitted a Federal officer who is excused from the list by that act, because the act to regulate commerce happens to provide that that official should be in the excepted class?

Mr. FOLK. But he had a right——

Mr. CARLETON. Yes.

Mr. COLSTON. But you included in that list, did you not, State officials, regardless of the policy of the States as to the respective morals of those States, regardless of what positive State law might have provided as to the excepted classes for the States, did you not?

Mr. CARLETON. I paid no attention to the State laws.

Mr. COLSTON. You paid no attention to the State laws, to what the State legislature, or the people of the State expressed by their representatives, decided should be moral and proper in their State, without subjecting the recipients of passes to charges of bribery, to improper relations, such as the Interstate Commerce Commission charges here against every member of these lists or against the people of these lists collectively; you included them, regardless of the provisions of State law, regardless of the opinions and ethics of the community in which these people lived and moved and received these passes; you included them in this list, did you not?

Mr. CARLETON. I included everyone in the list that was not excepted in the act to regulate commerce, as I said before.

Mr. COLSTON. You included, for example, Mr. L. B. Finn, H. G. Garrett, and William F. Klair, railroad commissioners of the State of Kentucky, in this black list or list of moral delinquents, did you not?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. You included Mr. B. A. Enlee——

Mr. FOLK. When he terms that a black list, do not let him put those words in your mouth; you mean you included those gentlemen in the list of those who received passes regardless of the fact that the law of Kentucky gives passes to members of the public-service commission.

Mr. CARLETON. Yes.

Mr. COLSTON. Well, you included in these lists, concerning which the commission said in this report, "The lack of morality reflected by the facts here compiled is a menace to the institutions of a free people. These citizens who sell their influence quite as much as though they accepted money bribes seem to be as willing to be tied as the carriers are ready to tie them." You included in this list Mr. B. A. Enlee, Frank Avent, H. H. Hannah, of the Railroad Commission of Tennessee, and the name of Miss Willie Fields, the secretary of the board?

Mr. CARLETON. I included those in the list of——

Chairman MEYER. Mr. Colston, let me call your attention to the fact that the language of the commission to which you are calling attention is something subsequent to the work which Mr. Carleton did, and regarding that he knows nothing.

Mr. COLSTON. Your honor, I am not putting the words of the commission in Mr. Carleton's mouth; I am simply connecting, as I have connected, I think, very directly, the lists that he compiled with the lists to which the commission refers, and am showing what those lists contain. I think it is entirely pertinent.

You included in those lists, did you not, the names of—I, of course, recognize in fairness to Mr. Carleton that he did not characterize them in that way. I am simply examining him as to what is contained in that list and have used his compilations and knowledge of the lists to connect it up with what the commission refers to.

Chairman MEYER. I wish to remind you that Mr. Carleton did not sit down and say, "Here is a list of moral delinquents, and here is one not to be so characterized."

Mr. COLSTON. You included in these lists, Mr. Robert R. Prentis, Mr. W. D. Franklin, William F. Rhea, and Mr. J. Richard Wingfield, of the Corporation Commission of the State of Virginia?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. You included in that list, and as the only members to receive passes in the State of North Carolina, the names of W. T. Lee, A. J. Maxwell, George P. Pell, and E. L. Travis, of the Corporation Commission of North Carolina, did you not?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. And you included in that list the names of Charles Henderson, Frank W. Julian, and Leon McCord, members of the Railroad Commission of Alabama?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. And the name of S. P. Kennedy, secretary of the railroad commission?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. Do you know that the same Mr. Henderson is governor of Alabama now?

Mr. CARLETON. I did not know it.

Mr. COLSTON. The name of S. P. Kennedy, secretary of the commission, you included?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. Now chairman of the commission. You also included the name of R. W. Solomon, rate clerk to the commission?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. And the name of Mr. E. B. Kay, the engineer of the commission?

Mr. CARLETON. Yes, sir.

Mr. COLSTON. And you included in your list as the only persons in the State of Mississippi to whom passes were issued the names of George R. Edwards, James Galceran, F. M. Sheppard, and W. B. Wilson, members of the Railroad Commission of Mississippi?

Mr. CARLETON. I would not say that was all of those I included in the State of Mississippi. I think you will find there were others.

Mr. COLSTON. I said of those who were included.

Mr. CARLETON. No; you said all those who received passes.

Mr. COLSTON. Well, of those who received passes in the State of Mississippi in the class of other State officers?

Mr. CARLETON. Yes.

Mr. COLSTON. And you included the names of O. F. Berry, B. A. Eckhart, William Kilpatrick, and J. A. Willoughby, of the Railroad and Warehouse Commission of the State of Illinois, did you not?

Mr. CARLETON. Yes, sir.

Mr. **Colston**. And you included the names of Michael Carey, James Donohue, D. E. Matthews, and Henry Zink, inspectors of the Railroad Commission of Indiana, which, with the exception of George Skelton, the inspector of the public-service commission, constitute the entire list of those in this class, or that is in the class of other public officials to whom annual passes were issued in that State?

Mr. **Carleton**. In the State of Indiana; yes.

Mr. **Colston**. Do you know that the State of Kentucky specifically permits or requires that its railroad commissioners be carried on free transportation within the State?

Mr. **Carleton**. I do not.

Mr. **Colston**. Do you know that the State of Alabama has a pass law and that it is specifically provided that railroad commissioners in that State may be carried on intrastate transportation?

Mr. **Carleton**. I do not.

Mr. **Colston**. Do you know that any of the commissioners whose names I have just read are not entitled to free transportation by the statutes of their States?

Mr. **Carleton**. No, sir.

Mr. **Colston**. You included in this Mr. William J. Stone, examiner of the Confederate Pension Department of the State of Kentucky, did you not?

Mr. **Carleton**. Yes, sir.

Mr. **Colston**. This act to regulate commerce provides that persons exclusively engaged in charitable and eleemosynary work shall be entitled to passes, does it not, and also provides for passes to inmates of national homes or State homes for disabled Volunteer soldiers, soldiers' and sailors' homes in Federal service, does it not?

Mr. **Carleton**. Yes, sir.

Mr. **Colston**. But you did not take into consideration that these States in the South might deem entirely moral to provide for the maintaining and transportation of ex-Confederate soldiers or ex-Confederate pension agents, did you?

Mr. **Carleton**. I considered that the examiner for the pension department was more in the nature of a public office than really an eleemosynary institution.

Mr. **Colston**. You did not except from these lists any of the officials which may be provided by any of these Southern States for taking care of ex-Confederate soldiers, did you?

Mr. **Carleton**. No.

Mr. **Colston**. Or inmates of Confederate homes?

Mr. **Carleton**. No.

Mr. **Colston**. The mileage and the value that are attributable to these passes were also included in the mileage and values you have testified to, were they not?

Mr. **Carleton**. Yes, sir.

Mr. **Colston**. Now, you spoke of certain missing pass reports. I have to confess I was not listening very attentively at the time. I understood you said there was something like a thousand pass reports missing. How did you arrive at the number of missing pass reports?

Mr. **Carleton**. We made a compilation of the regular scheduled runs of the trains carrying passengers, as shown by the regular train-service schedule, whether it was a daily train or daily except Sunday, and we charged those with the dispatcher's lists, so that if the train was canceled or annulled on a certain day we would not take it, and took only such trains as were run in extra trains or second divisions of a train, as shown by the dispatcher's list, and listed them, and then against that list we checked the conductor's reports of passes lifted, which should be returned by the conductors for those particular trains, and on that basis and in that manner we determined, as I stated this morning and this afternoon, that there were 1,536 reports out of a total of 11,706 of scheduled trains to run for which there were no conductor's reports of passes on it.

Mr. **Colston**. That was based on the assumption that there should be a pass report for every train?

Mr. **Carleton**. Yes, sir.

Mr. **Colston**. Whether there were any passes lifted or not?

Mr. **Carleton**. Yes, sir.

Mr. **Colston**. You know, as a matter of fact, do you not, that conductors frequently fail to send in pass reports when passes are not lifted, although they are careful enough to send in reports when passes are lifted? You understand that to be the fact, do you not?

Mr. **Carleton**. I do not. I do not know that they distinguish between one or the other. I do not know as they make any difference.

Mr. **Colston**. Did you make any check to ascertain whether or not there were any passes handled on these trains for which no reports were made?

Mr. **Carleton**. I could not tell you until I saw them. The conductors should make the report so we should know whether any were handled. His report should show a blank.

Mr. **Colston**. But you do not know that there were any passes handled on these trains; or if so, how many were handled or what proportion of those trains handled pass passengers, do you?

Mr. **Carleton**. No, sir; because the reports did not come in. It was impossible to tell.

Mr. **Colston**. Is there any rule of the commission that requires that conductors shall render a report of passes when there are no passes lifted, or does the rule of the commission require that conductors shall report passes honored?

Mr. **Carleton**. The rule of the commission is that conductors or ticket sellers must make a report of passes honored for each run. This report must cover all passes honored and not lifted except passes on it in suburban territory.

Mr. **Colston**. It does not provide for making a report on it where no passes are honored?

Mr. **Carleton**. No, sir.

Mr. **Colston**. Then your assumption was not provided for by the commission's rule, was it? Was there any rule that supported your assumption?

Mr. **Carleton**. That——

Mr. **Colston**. That a report should be made when no passes are honored?

Mr. **Carleton**. No, sir; not that they should report if there were no passes honored.

Mr. **Colston**. That is all.

Mr. **Keeble**. Mr. Carleton, will you be kind enough to look among your library and find a thin book which contains somewhat of a preliminary summary of your report in regard to passes of the Louisville & Nashville Railroad?

Mr. **Carleton**. Yes, sir.

Mr. **Keeble**. Will you be kind enough just to let me look at that a moment?

(Book handed to counsel.)

Mr. **Keeble**. How long did you say you spent in Louisville and in Nashville with your company looking into the pass matter? About six months—was that right?

Mr. **Carleton**. Well, we were in Louisville and Nashville approximately six months, but all of the time was not devoted entirely to the work on passes.

Mr. **Keeble**. The greater part of it was, I believe, according to your statement.

Mr. **Carleton**. A large part of it was.

Mr. **Keeble**. You had about 25 to 30 men engaged while you were at work on that?

Mr. **Carleton**. Yes, sir; at each place.

Mr. **Keeble**. Now, I notice on page 10 of your report you refer to attorneys that are engaged in smaller cities, and you have classified the attorneys in your testimony to-day in two classes, as I recall it, and I want to know if I am correct. Wherever an attorney has been on a salary you have not included passes issued to him in this report, but if he were not on a salary, you have put the passes, both card passes—well, you classify them between attorneys who received salaries and who devoted practically all their time to the company's business, in one class, and then you classified the other attorneys in this group on page 65, for instance, where the card passes were issued to attorneys in Tennessee as attorneys who were really not attorneys in that sense, am I not correct?

Mr. **Carleton**. Those that we considered were not devoting substantially their entire time to the service of the carrier as attorneys.

Mr. **Keeble**. Yes; you reported a number of attorneys in middle and west Tennessee in my own district, I believe?

Mr. **Carleton**. I would not be a bit surprised.

Mr. **Keeble**. And they were the attorneys that you classified in this class:

> As a rule the attorneys in the smaller cities are men of influence in their community and frequently are quite active politicians, and by making such appointments and issuing passes the carrier is able in more or less degree to direct the activities of such men along lines favorable to itself.

Now, that had reference to these attorneys which you have classified on page 65?

Mr. **Carleton**. I do not know whether those particular attorneys are on there, but to attorneys in general.

Mr. **Keeble**. Well, but they fall within that class right there. I just want to understand that, because you are giving me a good deal of information.

Mr. **Carleton**. You understand that may not include all the attorneys out——

Mr. **Keeble**. Let us take up some of them in my own territory. I think that you do not mean to say that simply because a man is not on a salary or is not devoting practically all his time if he really looks after all of the business of a railroad in a county, and that is the purpose for which he is employed, that he would be subject to this sweeping criticism, do you?

Mr. Carleton. If he devoted his time to the carrier?

Mr. Keeble. No; I did not say that. You do not expect a man, for instance, in Williamson County—you know where that is?

Mr. Carleton. No; I am not acquainted with the various counties in Tennessee.

Mr. Keeble. And we have two general attorneys in Williamson County, and you say you have classified them when you say you are not acquainted with the county.

Mr. Carleton. Yes.

Mr. Keeble. And you make a solemn report of a man who happens to be practicing in Williamson County and who represents the Louisville & Nashville Railroad there, and without knowing the amount of business he does or the character of the man or the amount of fees that he is paying, as falling within a class of men who are employed solely for the purpose of getting political activity, do you not?

Mr. Carleton. I would say not, because the people we have included there are those—we ascertained the payments which have been made to all of the attorneys which have been placed here during the year 1913, in the nature of fees or on pay rolls or vouchers, and we did not include any of those who had received a compensation which would indicate that they had done very much work for the carrier, which was paid for in cash other than the pass, such sum, in other words, in which the pass appeared to be the main consideration for their services.

Mr. Keeble. Do you know where Giles County is?

Mr. Carleton. I do not.

Mr. Keeble. Have you ever been to Pulaski?

Mr. Carleton. Not to my knowledge.

Mr. Keeble. Do you know Mr. E. E. Eslick?

Mr. Carleton. I do not.

Mr. Keeble. Have you any conception how many lawsuits he carries on his docket for the Louisville & Nashville Railroad over there all the time?

Mr. Carleton. I have not.

Mr. Keeble. Did you ever make any inquiry of that?

Mr. Carleton. No.

Mr. Keeble. Have you any knowledge now of your own knowledge how much his fees average a year?

Mr. Carleton. Not the average a year; not now I have not.

Mr. Folk. Have you any record of that, how much has been paid in?

Mr. Carleton. My recollection is that we have a record, which I would like to reserve the right to look up as to all the fees and compensations which have been paid these parties.

Mr. Folk. You have a record of every amount paid each attorney in one of those books you have already introduced?

Mr. Carleton. I do not think so.

Mr. Keeble. If you will just let me finish with the witness, I will be very glad, because you did not come to my office and ask how much he had been paid.

Mr. CARLETON. No.

Mr. KEEBLE. And you did not ask for any voucher for Mr. Eslick in my office?

Mr. CARLETON. No.

Mr. KEEBLE. The mere fact that for one year his business had not been concluded and he had not been paid, you would not stop at that, would you, if he had been retained for 10 years?

Mr. CARLETON. We took the compensation for the same period we took the passes.

Mr. KEEBLE. And never looked any further beyond or below, and so because you have not found anything, yet you do not know whether he got $1,000 or $500 that year, do you?

Mr. CARLETON. Not right now, as I am sitting here; but we have a record of it.

Mr. KEEBLE. Have you a record of it?

Mr. CARLETON. We have, if he got $1,000.

Mr. KEEBLE. Suppose he got $500, have you got it?

Mr. CARLETON. I think we have.

Mr. KEEBLE. Will you bring it up to-morrow, please, sir?

And yet, with that kind of information, without going to the court, without going to his docket, or talking to him or anybody who had charge in that district, you write him down as a man that is merely nominally retained on a pass, largely for the reason of his political activity.

Mr. CARLETON. I probably did not have reference to any particular one. That was a general statement.

Mr. KEEBLE. Which one did you want to indict in that list? Pick out one.

Mr. CARLETON. I do not know as I can pick out any.

Mr. KEEBLE. I want to state in my own district, because I know these gentlemen. Let me ask, do you refer to Mr. R. H. Crockett, of Franklin?

Mr. CARLETON. I would like to see Exhibit 373 [referring to exhibit]. No; I have no direct reference to any of those, only——

Mr. KEEBLE. You were classifying, as in the case of Mr. Eslick—you do not know how much of his time he gave to this business, do you?

Mr. CARLETON. No.

Mr. KEEBLE. You never did know, did you?

Mr. CARLETON. No.

Mr. KEEBLE. You never knew how many cases he tried, did you?

Mr. CARLETON. No.

Mr. KEEBLE. You never knew how many days he spent in court, a year, did you?

Mr. CARLETON. No.

Mr. KEEBLE. All you knew about it was that you could not find that he had devoted substantially all his time to the company's business. That is what you had in mind?

Mr. CARLETON. I had in mind that he did not receive much of a consideration, money consideration, other than the pass issued.

Mr. KEEBLE. Now, did you not state a while ago that you put every man on this list except the man who gave substantially all his time to the business of the company?

Mr. CARLETON. Yes.

Mr. **Keeble**. And not the question of whether it was a little amount or a large amount?

Mr. **Carleton**. That is the basis on which we made the statement, but——

Mr. **Keeble**. Now, then, I understand that you did not classify Mr. Eslick upon the basis he did or did not get a large amount of money, but because he was not giving substantially all his time to the business of the company. Is that right?

Mr. **Carleton**. In that general statement of substantially all his time, we considered that if an attorney was of a character or of the ability to be retained by the Louisville & Nashville Railroad as an employee who would devote substantially all his time to its legal matters, he would naturally be entitled to a fair consideration and compensation, and the fact that he did not receive it, we placed him in there under that deduction.

Mr. **Keeble**. Under the deduction that he was employed for political reasons?

Mr. **Carleton**. Not necessarily that.

Mr. **Keeble**. That is what you said over here, is it not?

> As a rule, the attorneys in the smaller cities are men of influence in their community and frequently are quite active politicians, and by making such appointments and issuing passes the carrier is able more or less to direct the activities of such men along lines favorable to itself.

You wrote that, did you not?

Mr. **Carleton**. Yes, sir; in that way, more or less degree, and frequently.

Mr. **Keeble**. And that includes this type of people. Now, let us take another man. Do you know Mr. Dancey Fort, at Clarksville? You have put him down in that class.

Mr. **Carleton**. No; I do not know him.

Mr. **Keeble**. Well, you put him down in that class. What do you know about Mr. Fort's connection with the Louisville & Nashville Railroad?

Mr. **Carleton**. Nothing more than that he is given a pass and i company attorney and that his money compensation is not ver great.

Mr. **Keeble**. You did not know, however, that he was a partner of Mr. Michael Savage, who has represented the company for the last 15 or 20 years in Montgomery, Dickson, and Houston Counties, at a regular salary, did you, and has for 20 years; did you know that?

Mr. **Carleton**. If we—no; I did not know that.

Mr. **Keeble**. And that Mr. Fort's connection with the company was by reason of his partnership and his assistance of Mr. Savage in that business. You did not know that?

Mr. **Carleton**. No.

Mr. **Keeble**. You made no inquiry about it, did you?

Mr. **Carleton**. No.

Mr. **Keeble**. All you looked for was to see where he had not earned a million dollars and proceeded to classify him as a man put on the list for political purposes?

Mr. **Carleton**. I saw he was a man that did not draw a salary—I can not tell until I look at my list, exactly, but a very nominal salary.

Mr. **Keeble**. I suppose up in your country unless a man is drawing a pretty stiff salary from somebody you believe he is just out politicianing, as a rule, or whether he is or is not. Do you know Mr. J. H. Henderson, of Franklin? Did you know that Mr. J. H. Henderson practiced law in Williamson County practically thirty-odd years and had represented the Louisville & Nashville Railroad at that point for more than 20 years, and had represented it in every court in Williamson County and in the supreme court of the State and the court of appeals here; did you know that?

Mr. **Carleton**. No.

Mr. **Keeble**. Do you know he had been paid substantial fees time and time and time again?

Mr. **Carleton**. Not in 1913 he did not.

Mr. **Keeble**. Well, did you make no further inquiry beyond 1913?

Mr. **Carleton**. No.

Mr. **Keeble**. Did you know that at that time Mr. Henderson was a man who had occupied some of the highest positions of trust that people had ever had and was a lawyer of trust in the largest litigation in this county?

Mr. **Carleton**. No.

Mr. **Keeble**. You did not know that? You put Mr. George T. Hughes, jr., down here and you have classed him as a man who is selected by the company for a nominal consideration because of the fact that he was influential in his county probably and could be used in shaping political activities. Do you know anything about George T. Hughes, jr.?

Mr. **Carleton**. I do not know Mr. Hughes.

Mr. **Keeble**. Did you know Mr. George T. Hughes, sr., who lives at Columbia?

Mr. **Carleton**. No.

Mr. **Keeble**. Did you ever hear of him?

Mr. **Carleton**. No.

Mr. **Keeble**. You do not know that George T. Hughes is considered not only one of the ablest lawyers, but one of the cleanest men in Tennessee? You did not know that that was part of his character?

Mr. **Carleton**. I am not acquainted with the gentleman.

Mr. **Keeble**. You did not know that George T. Hughes, sr., had represented the Louisville & Nashville Railroad in Maury County and Lawrence and Wayne Counties for probably 25 years, and drew a salary of more than $2,000 a year for many many years for the business of the company and had been its exclusive advisor in that section and participated in some of its most important litigation?

Mr. **Carleton**. No.

Mr. **Keeble**. And you did not know that George T. Hughes, jr., was his son whom he had taken into his firm and was giving him a start in life, as an honest and honored father has a right to do, and that the company was making him one of its attorneys in order to help his father; you did not know that?

Mr. **Carleton**. I knew nothing about Mr. Hughes.

Mr. **Keeble**. And you made no inquiry?

Mr. **Carleton**. No.

Mr. **Keeble**. You wrote down in this book a young man who is as clean as you ever dared to be, and the son of a man who stands as high as any man in this country, as a man put on the pass list of a company for political purposes without ever asking anybody a question about it, did you not?

Mr. **Carleton.** I put him on that list if he received a pass without any material consideration—monetary consideration.

Mr. **Keeble.** But did you not write him down without every asking any question about him of any living soul, on an ex parte statement—on the mere fact that he had a pass and you could not find where he had gotten a large salary?

Mr. **Carleton.** Well, I think I would have put him down, if I had ascertained, under the principle, under the general caption under which we made our selection of attorneys.

Mr. **Keeble.** That was a very arbitrary selection, don't you think, to just condemn a man in the minds of the public without any hearing at all, except the fact that you did not find anything in the vouchers which satisfies your hypercritical mind? Don't you think that is rather harsh treatment?

Mr. **Carleton.** I would not say.

Mr. **Keeble.** Would you not hate to be treated that way? Would you not hate to have your boy treated that way, if you ever get to be as good a man as Mr. George Hughes?

Mr. **Folk.** I submit that is off the record in this case.

Mr. **Keeble.** Why, if we had been staying on the record, Mr. Folk, you know you would not have lasted 15 minutes.

Now, I want to take up some more of these. You take Mr. J. W. E. Moore, of Brownsville, Tenn. Do you know him?

Mr. **Carleton.** I do not.

Mr. **Keeble.** Do you know he had represented the Louisville & Nashville Railroad Co. down there for 18 or 20 years in that section?

Mr. **Carleton.** No.

Mr. **Keeble.** And he not only tried cases in Haywood County, but in surrounding counties, when they had difficult litigation in his vicinity, and he went out to help try them?

Mr. **Carleton.** No.

Mr. **Keeble.** Did you not know that Mr. J. W. E. Moore was one of the ranking lawyers of his section of the State?

Mr. **Carleton.** No.

Mr. **Keeble.** And did you not know that he was a man that stood as high professionally as anybody there, and that anybody would be glad to have him as a lawyer?

Mr. **Carleton.** No.

Mr. **Keeble.** You did not know that. Now, you have written down my old friend Judge McFarland down here at Humboldt, as a man that is put on this list and kept on this list largely for political purposes. Did you ever see old Judge McFarland?

Mr. **Carleton.** I am not acquainted with the gentleman.

Mr. **Keeble.** You did not know he was over 80 years old, did you?

Mr. **Carleton.** No.

Mr. **Keeble.** You did not know that for many years he had led his county in every good cause, pretty much, did you?

Mr. **Carleton.** No.

Mr. **Keeble.** You did not know he had been an attorney for this railroad company ever since the rail was laid in his county, did you?

Mr. Carleton. No.

Mr. Keeble. And that he took pride in the fact that in all these years he had represented them in every litigation in Gibson County; all these forty-odd years he had been representing them there?

Mr. Carleton. No, sir.

Mr. Keeble. And you did not know that this old man was carried on the list in his old age largely for the reason that the company did not want to break an association with him and hurt his feelings by going out and getting a younger and more active man, did you?

Mr. Carleton. No.

Mr. Keeble. You never asked anybody about Mr. McFarland, did you?

Mr. Carleton. No.

Mr. Keeble. And you have no idea whether he has tried 1 case or 50 cases in the past 20 years, have you?

Mr. Carleton. No.

Mr. Keeble. You have my old friend George R. Seay down here. Did you ever see Judge Seay?

Mr. Carleton. No.

Mr. Keeble. You did not know that Judge Seay and his son Ed T. Seay had occupied a partnership for many years at Gallatin together, father and son, before Mr. Ed Seay came into Nashville as my assistant, did you?

Mr. Carleton. No.

Mr. Keeble. You did not know they still carried their firm, although the old man is too feeble to practice law, and has to leave home frequently in the winter and go to Texas for his health, and that his son, out of loyalty to him, carried legal business at Gallatin under the name of Seay & Seay, and divides his compensation with his father for that part of the business, did you?

Mr. Carleton. No.

Mr. Keeble. You did not know that Judge Seay was a member of the constitutional convention in the State of Tennessee in 1870, did you?

Mr. Carleton. No.

Mr. Keeble. You did not know that he was a member of chancery for 16 years in his division, did you?

Mr. Carleton. No.

Mr. Keeble. You did not know that he was an ex-Confederate soldier who had fought four years through the war?

Mr. Carleton. No.

Mr. Keeble. You did not know that he was a respected citizen of the State of Tennessee?

Mr. Carleton. I knew nothing about him.

Mr. Keeble. You knew nothing about him except he did not get a million dollars a month or devote his entire time to practicing for the railroad, and you write him down as a political agent on a pass?

Mr. Folk. Did you write him down as a political agent on a pass?

Mr. Keeble. You can take the witness after I am through.

Mr. Folk. I am asking him. You are putting the words in his mouth.

Mr. Carleton. I did not; no, sir.

Mr. KEEBLE. Whatever your language is—he says:

> As a rule the attorneys in the smaller cities are men of influence and frequently are quite active politicians, and by making such appointments and by issuing passes the carrier is able in more or less degree to direct the activities along lines favorable to itself.

Now, Governor, I am pretty sensitive about my local attorneys in my district. Aside, I think they are as high-priced men as are to be found in the State, and they have never been coerced or acted upon, and I want——

Mr. FOLK. This gentleman is not trying to assault them in any way.

Mr. KEEBLE. I just want to show that this gentleman here has unconsciously been guilty of perpetrating a great deal of ignorance on the commission.

Now, you did not know—did you ever hear of Mr. Henry Ewan Garner up here at Springfield?

Mr. CARLETON. No.

Mr. KEEBLE. You never tried to coerce Mr. Garner about anything, did you?

Mr. CARLETON. I don't know Mr. Garner.

Mr. KEEBLE. Yes. He is dead now, fortunately for you; and you never tried to coerce Mr. Garner, did you?

Mr. CARLETON. I believe I have answered the fact. I did not know him.

Mr. KEEBLE. You do not know anything about him?

Mr. CARLETON. No.

Mr. KEEBLE. You did not know he had practiced law all his life in middle Tennessee, not only in Robertson County but in all the adjoining counties?

Mr. CARLETON. No.

Mr. KEEBLE. You did not know he was regarded as in his section the greatest advocate of his period, did you?

Mr. CARLETON. No.

Mr. KEEBLE. You did not know that he tried every case for the Louisville & Nashville Railroad in Robertson County for the last 10 or 12 years of his life?

Mr. CARLETON. No.

Mr. KEEBLE. And that he came down here to the Federal court to try them?

Mr. CARLETON. No.

Mr. KEEBLE. You did not know that he tried a case up there against one of the counsel in this case once in Robertson County involving $65,000 and fought it out for days, and then had to come down here and start over again, and he came down here to try it over again?

Mr. CARLETON. No.

Mr. KEEBLE. You did not know that he tried cases involving thousands of dollars for the Louisville & Nashville Railroad in the Nashville Federal court? You did not know a thing about him?

Mr. CARLETON. Nothing more than the fact that he received a pass without any material consideration.

Mr. KEEBLE. What do you call material consideration? I have paid Mr. Garner frequently $1,000 and $1,200 on a voucher.

Mr. **Carleton**. The year in which he received his pass, 1913, he did not receive a very material consideration.

Mr. **Keeble**. I do not know about that, but if Mr. Garner was paid as his cases were finished, don't you think in justice you should inquire whether that had been a lean year or a full year before you put him down in this kind of a category?

Mr. **Carleton**. We examined about six months on either side of 1913, and if there was any payment of that kind for cases in either time we took it into consideration.

Mr. **Keeble**. Did you not just say you never examined except for 1913?

Mr. **Carleton**. No; I said, or intended to say, we did not include anything except 1913. We examined all vouchers back as far as 1906.

Mr. **Keeble**. And you say there was no substantial payment made to Mr. Ewan Garner of my office as attorney after 1906?

Mr. **Carleton**. No; I ought to make a correction there of the impression which I may have given. I stated that I did not have any of the vouchers examined. We examined all vouchers back as far as 1906 for general purposes, but we did not make any list of specific attorneys or pay particular attention to the compensation any of these particular attorneys received only during the year 1913, and as I said a few months on either side, about six months, to see if there was any.

Mr. **Keeble**. Take this list here. I would be glad for you to look at this Tennessee list here, for instance, and I am going to call off the ones within my district and I want you to listen:

Mr. Dancey Fort; Mr. A. E. Garner, Springfield; Mr. J. E. Garner, Springfield; Mr. J. H. Henderson, of Franklin; Mr. T. P. Henderson, of Franklin; G. T. Hughes, jr., of Columbia; Mr. W. B. Leech, of Dickson; Mr. J. W. Lewis, of Paris; Mr. S. C. Lewis, of Dover; Mr. J. W. E. Moore, of Brownsville; Mr. J. W. E. Moore, jr., of Brownsville; Mr. J. F. Morrison, of Lawrenceburg; Mr. W. T. McFarland, of Humboldt; Mr. W. H. Bobbitt, of Humboldt; Mr. C. C. Bond, of Jackson; Mr. R. H. Crockett, of Franklin; Mr. E. E. Eslick, of Pulaski; Mr. John T. Peeler, of Huntingdon; Mr. George E. Seay, of Gallatin; Mr. W. D. Spears, of Chattanooga. They are the ones that are in my district.

Now, which one of those men, from your elaborate and careful investigation in the six months with your 30 agents and all the proof that you have, would you say falls within the class that are employed by the railroad company as attorneys by reason of their political influence and are kept for the purpose of shaping the politics rather than trying lawsuits?

Mr. **Carleton**. I could not name any particular one.

Mr. **Keeble**. Why couldn't you?

Mr. **Carleton**. Because I do not know any of them.

Mr. **Keeble**. Now, would you undertake to say, really, after your mind has been a little bit stimulated, would you undertake to write down now those names and say that any single one of them was put on the list of the company's attorneys in order that they might be aiding the shaping of the political policies alone, and were merely carried on passes and with no compensation? Would you say that?

Now, just answer me. Will you say that any one of those was put on there for that purpose?

Mr. Carleton. I would not make the statement that those particular people were put on there for that purpose.

Mr. Keeble. Take this whole list of the Louisville & Nashville attorneys which you have collected in Kentucky and Tennessee in these various ways and state of your own knowledge any man you would swear——

Mr. Jouett. What is the number, Mr. Keeble?

Mr. Keeble. One thousand four hundred passes here issued to attorneys; they are trip passes, I take it, as well as other kinds. Now, what attorney are you willing now, after six months' investigation, to indict before the people of this State or before the Interstate Commerce Commission—if that is a matter of any particular moment now—which one of them are you willing to say was put on a pass list for that purpose?

Mr. Carleton. I would not undertake to name any specific one.

Mr. Keeble. You do not know any, do you?

Mr. Carleton. No, sir.

Mr. Keeble. And yet you have written them down in that book. Now, if I have made a fair statement of the names and character of the men that I have presented to you, do you not feel sorry that you have slurred them in that way; if that is their character, would you not regret to feel that you had treated a class of men who approximate what I have described them to be by that sort of a characterization, even if they did happen to work for the Louisville & Nashville Railroad at times? Wouldn't you?

Mr. Carleton. I do not think that I would change the language of my report much from what I have written, to the effect that the carrier is able to do so.

Mr. Keeble. That is not what you said about that. You said they were selected so that they could do that, as I remember. I would like for you to tell me just what you mean by that, anyway.

Mr. Carleton. I think the language of my report——

Mr. Keeble. Well, it speaks for itself. Just read it, if you can.

Mr. Carleton (reading):

> It is the practice of the carrier to appoint local attorneys at various points along the line, whose only remuneration in certain cases is an annual pass. In some instances the attorneys are also carried upon the pay roll at a very nominal amount or they are paid, through the medium of vouchers, a small annual retainer. Occasionally, in the case of the performance of some special service, fees are paid. It is apparent that when an attorney accepts a pass it is understood that he is retained by the carrier and is not to accept any cases against it, but rather to work for its interest. As a rule the attorneys in the smaller cities are men of influence in their communities, and frequently are quite active politicians, and by making such appointments and issuing passes the carrier is able in more or less degree to direct the activities of such men along lines favorable to itself.

I state that the carrier is able to do so. There is no allegation there that the carriers did do so.

Mr. Keeble. You do not mean to be understood, then, as saying that that is the purpose of the retaining of those people. You take that back?

Mr. Carleton. I have never said it, in the first place.

Mr. Keeble. Well, you will not say that it was?

Mr. Carleton. I will not change the language of the report.

Mr. Keeble. You will not change the language of the report?

Mr. Carleton. No.

Mr. Keeble. Now, what investigation did you make of these attorneys as the basis of your report?

Mr. Carleton. What investigation?

Mr. Keeble. Yes, sir. What investigation did you make?

Mr. Carleton. The issuance of the pass and the pay roll and voucher considerations for the year 1913, with the examination of vouchers on either side to see whether they received any special fees applicable to that period under which the pass was given.

Mr. Keeble. And you are satisfied, in so far as those attorneys I have mentioned to you, that none of these men did receive substantial amounts either in 1913 or for a year one side or the other?

Mr. Carleton. A few months on either side; yes, sir.

Mr. Keeble. You are satisfied of that?

Mr. Carleton. Yes, sir.

Mr. Keeble. Did you go into that yourself or did you get it second hand?

Mr. Carleton. Part of it myself and the rest of it worked over with one of the assistants who went through it.

Mr. Keeble. Did you examine into the names of any of those men I have mentioned yourself; could you swear to that?

Mr. Carleton. I could not swear to the particular one that I did. I know I looked over the pay rolls of several of the months, and, if he was on the roll, he got it.

Mr. Keeble. What do you mean by saying indirectly to direct the activities of attorneys? What do you mean by that? Do you think because a man happens to have a lawsuit for a railroad in the State of Tennessee that he goes out as a political agent?

Mr. Carleton. Well, I mean by that that he was able to direct them largely in the measure in which the testimony in the last two days has appeared—that the various senators and representatives have given.

Mr. Keeble. Well, you mean that the sympathy—do you mean by that to say that that merely makes a kindly feeling; is that it?

Mr. Carleton. You can have it that way; yes, sir; that it would make a kindly feeling; if an attorney has received a pass from the carrier he is very apt not to take up cases against the carrier. If some other one will take it, he is apt to be reluctant in appearing against the carrier.

Mr. Keeble. Are you under the impression that there is a single attorney in my district in middle and west Tennessee that merely gets a pass and nothing else?

Mr. Carleton. I do not know; I have not my lists that I can compare against that.

Mr. Keeble. Well, whatever your list is, I can state you are mistaken about that.

Mr. Carleton. Well, your particular district, Judge Keeble, might be.

Mr. Keeble. Point out one that you think you know more about than mine.

Mr. Carleton. I can not answer any further without the list which I stated would be brought up later. I would like to reserve any answers on that until I have my records.

Mr. **Keeble.** Where did you get the idea that the great bulk of attorneys that represent railroads in the country merely got a pass, and just were bought off by a pass from suing the railroad? What State did you come from?

Mr. **Carleton.** Oh, Illinois and Iowa and Minnesota.

Mr. **Keeble.** That is up there where they have those farmers' institutes without transportation, is that it?

Mr. **Carleton.** Oh, they meet there.

Mr. **Keeble.** That is the practice up in your country—that a railroad can take a pass and go to the average influential lawyer in a small town and give him a pass and keep him from suing them, and direct his political activities. Is that the class of folks you have up in your country?

Mr. **Folk.** I submit that question is improper.

Mr. **Keeble.** I just want to find out what kind of folks he has up in his country. I do not believe that is true myself: I want to ask him if he wants to put it on his own people; he has put it on ours.

Mr. **Folk.** This is not a race war or sectional fight.

Mr. **Keeble.** No; but he has put a charge on our people he would not want to make against his own.

Mr. **Folk.** He has not made a charge against your people.

Mr. **Keeble.** I think he has.

Mr. **Folk.** He would write that against the people in his own State who received passes the same as against these.

Mr. **Keeble.** You think then that all the lawyers in a county are employed by a railroad to keep them from suing the railroad, is that your idea about it?

Mr. **Carleton.** No, sir; not all of them.

Mr. **Keeble.** Well, let us take it, take up in Iowa, for instance, where you came from, what is the practice—did you ever work for a railroad?

Mr. **Carleton.** Yes, sir.

Mr. **Keeble.** What railroad did you ever work for?

Mr. **Carleton.** I worked for the Iowa Central and the Minneapolis & St. Louis.

Mr. **Keeble.** Take one of your railroads in your country, was it their practice to just retain as many lawyers in the county through which the road ran as they could, by giving them a pass?

Mr. **Folk.** I object to that. It is not what railroads in Iowa may have done years ago, but what the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been doing here.

Mr. **Keeble.** There is no proof that the Louisville & Nashville Railroad has been doing such a thing. I am trying to find out where he got his notion, and he has admitted he did not inquire and go into any county and does not know anything about the dockets or the number of lawsuits they try.

Mr. **Folk.** He has told you he got his ideas from the pay rolls and records of the carriers.

Mr. **Keeble.** I know he has told me that, but I have a right to test the accuracy of his statement.

Mr. **Folk.** By asking him whether he worked for the Iowa Central?

Mr. KEEBLE. Yes. In other words, I want to show the commission that he got his ideas not out of any pay roll or record, but simply that was what he expected to find here by reason of the fact that it was that way where he came from.

Mr. FOLK. Do you want to say he never saw a pay roll, and it was all imaginary?

Mr. KEEBLE. No; I have no doubt he saw the pay rolls, but he could not have seen the things he says in regard to the lawyers I have mentioned.

Mr. FOLK. Well, he has the papers.

Mr. KEEBLE. Let him bring them here. Take, for instance, the county of Maury, how many lawyers do the Louisville & Nashville Railroad have in the county of Maury?

Mr. CARLETON. I do not know by counties.

Mr. KEEBLE. Well, you have made a statement that they employed influential men in communities, and you said a while ago that they gave men passes to keep them from suing them. How many lawyers in Maury County; do you know?

Mr. CARLETON. No.

Mr. KEEBLE. Don't you know there are some 15 or 20?

(No reply.)

Mr. KEEBLE. Did you know there are 20 or 30 lawyers in Columbia?

Mr. CARLETON. No.

Mr. KEEBLE. How many lawyers carry passes of the Louisville & Nashville Railroad?

Mr. CARLETON. I do not know, unless they are on the list there.

Mr. KEEBLE. Do you know how many lawyers there are in Franklin?

Mr. CARLETON. No.

Mr. KEEBLE. Do you know how many lawyers there are at Gallatin?

Mr. CARLETON. No.

Mr. KEEBLE. How many at Brownsville?

Mr. CARLETON. No.

Mr. KEEBLE. How many at Humboldt?

Mr. CARLETON. No.

Mr. KEEBLE. How many in the whole of Gibson County?

Mr. CARLETON. No, sir.

Mr. KEEBLE. Now, then, you would be surprised if I would say that with the exception of Williamson County, on this list here—except where there was father and son or partnership of some kind—that the Louisville & Nashville Railroad had only one representative in any one county, would you not, even in places where they have towns of from 3,000 to 5,000 people, in large counties?

Mr. CARLETON. No, sir; I would not expect you to keep more than one attorney in a small county.

Mr. KEEBLE. If we were going out and employing all the lawyers in a town on passes to keep them from suing us we would have to do it or else the pass would not do us any good, would we not? In other words, if we just employed one lawyer in a town by giving him a pass, and there were 10 other lawyers, there would be 10 more men to sue us, would there not?

(No reply.)

Mr. KEEBLE. Now, did you not ask and receive from the general counsel of the company before you went into this investigation a printed list of all the attorneys of the Louisville & Nashville Railroad everywhere?

Mr. CARLETON. Yes, sir.

Mr. KEEBLE. And you got that and you went into what you call the pay rolls, and after that you made up your own mind without asking anybody any questions?

Mr. CARLETON. Made up my own mind how?

Mr. KEEBLE. Which list you were going to put these men in?

Mr. CARLETON. I have explained twice, I think, what men I put on that list.

Mr. KEEBLE. So if you picked out a clean, able man that had been devoting his time for years to the legitimate practice of the law and put him in this class, and made a mistake, that was just simply a mistake made for not pursuing the investigation further, is that the idea?

Mr. CARLETON. I put him on that list on the basis on which I explained I made the list out.

Mr. KEEBLE. So you wrote down there, any man who does not devote substantially all his time to the railroad, or a man who does not get a very substantial amount of money in the year 1913, as generally falling within that class of lawyers in the small communities who can be handled for a pass and a trifle?

Mr. CARLETON. I read into the record my statement.

Mr. KEEBLE. Well, you meant that as a sort of smear at the organization of the law department of the railroad, did you not?

Mr. CARLETON. No, sir.

Mr. KEEBLE. You did not? Well, would you not feel rather badly if somebody were to say that you were simply practicing law and you were given a pass because they supposed they could direct your political activities with just a little chinquapin amount of money and buy you off that way? Had you not rather have a connection of that sort? Would you like to be written down in that way?

Mr. CARLETON. Not with the statement that my name would tie me up exactly and say that I received it for that particular purpose.

Mr. KEEBLE. Now, let us see how that would sound. Mr. Carleton is an attorney in a small town in Iowa; he is a man of influence in his community and frequently quite active in politics, and by appointing him local attorney and issuing him a pass the railroad will be able in a more or less degree to direct his activities along lines favorable to itself. Would you feel complimented? Would you not feel like you had been rather badly treated if a man were to write that down without coming to see if you really were that sort of a man?

Mr. CARLETON. If he makes a specific statement of me, I certainly would.

Mr. KEEBLE. Did you ever know anything about the golden rule?

Mr. CARLETON. Yes, sir.

Mr. KEEBLE. Sir?

Mr. CARLETON. Yes.

Mr. KEEBLE. What is the golden rule?

Mr. CARLETON. "Do unto others as you would have others do unto you."

Mr. KEEBLE. You say you would not want to be written down that way if it is not true, and you would not relish it if it was, would you?

Mr. CARLETON. No, sir.

Mr. KEEBLE. Now, don't you think, if you just take your own viewpoint about it, and think how you would hate to be written down in that way in that same general classification, don't you think you had better have been a little slower in putting men down until you know a little further than simply because you could not find a voucher in 1913? Now, frankly, just as man to man, don't you think you have been a little rough on us?

Mr. CARLETON. Not in the way in which the list was compiled and the information I was giving to the commission and the statement of fact.

Mr. KEEBLE. You mean you went out for the purpose of making it as bad as possible, and just did not care to find anything that would ameliorate that. Is that your idea?

Mr. CARLETON. No.

Mr. KEEBLE. Are all your facts and statements about people in your report, about the Louisville & Nashville Railroad, as accurate or any more accurate than what you have written down about these attorneys in middle and west Tennessee, that I have named? Do you know any more about the balance of your figures than you know about that?

Mr. FOLK. That is not a fair question.

Mr. KEEBLE. I think I can test that. I am going to show about these men, if there is any denial of it, I think you will admit I have made a pretty fair statement of the character of these men.

Mr. FOLK. That is like asking a man if he has stopped whipping his wife. That is an unfair question.

Mr. KEEBLE. Oh, well; that old question about whipping your wife in these suffrage days has gone out of fashion. No man has—it is the shoe on the other foot. It is a question of a man keeping his wife from whipping him. Well, of course, if he is not willing to state, I assume that if it was any more accurate, he would say so.

Mr. CARLETON. I think the figures that are put in here are a statement of fact, and can be verified by the passes received and the names of the people and the numbers and mileage traveled, and it can be verified from the carrier's records in the figures given there.

Mr. KEEBLE. Now, Mr. Carleton, you said that you assumed that on the ground—or at one time in your testimony you stated that the reason you assumed a man did not appear any larger beneficiary of the treasury than these gentlemen I have mentioned, was a sort of man that was tied on for political purposes more or less. You assumed that because you were under the impression that that was the general custom of railroads, I believe you said?

Mr. CARLETON. I do not think I said that.

Mr. KEEBLE. Did you ever know any railroad that had such a custom?

Mr. JOUETT. Practice, he says.

Mr. KEEBLE. Such a practice as that.

Mr. CARLETON. I do not think it is beyond the possibilities. They may be able to do it.

Mr. KEEBLE. I am not talking about what they may be able to do. I am asking you if you will say whether or not you ever knew a railroad in your own experience that followed the policy which you have outlined here, as what you thought was being practiced by the Louisville & Nashville Railroad Co.?

Mr. CARLETON. I could not name a particular road with a particular individual at the present time.

Mr. KEEBLE. Why could you not name it now? Have you any objection to naming it now?

Mr. CARLETON. I could not recall any particular road.

Mr. KEEBLE. You are positive, then, that you do not recall a single railroad that ever practiced what you have ascribed here to the Louisville & Nashville Railroad, and what you said was the practice of railroads, are you?

Mr. CARLETON. Well, I——

Mr. KEEBLE. You never knew one to do it?

Mr. CARLETON. Yes: I have known several roads, as stated in here, to employ attorneys, that is through roads, to employ attorneys for the consideration of a pass, and I still think that the carrier would be able to influence them.

Mr. KEEBLE. What railroad did you ever know that made a practice of employing attorneys on passes alone and very small fees throughout their system, local attorneys in small towns?

Mr. CARLETON. I do not think that is a fair question to ask me.

Mr. KEEBLE. Are you not willing to tell whether you ever knew one or not?

Mr. CARLETON. I do not think that is a fair question to ask.

Mr. KEEBLE. Of course, if you do not—I am not going to insist, if you do not want to tell me about it, if you have anything you want to keep back, just hold her back.

Mr. FOLK. He is not trying to hold anything back. It is a question which it is impossible to answer. He has to examine every railroad in the United States as definitely as he has the Louisville & Nashville Railroad in order to answer that question, and it is an impossibility.

Mr. KEEBLE. If he does not know, he can say so, and if it is the lack of his information, then, of course, I will excuse him. No man is held accountable for what he does not know, thank the Lord for that.

Mr. FOLK. It is self-evident that no man could answer such a question, for no man could be as accurately acquainted with all the railroad affairs in the United States as that question would imply the witness is.

Mr. KEEBLE. I do not think Gov. Folk quite understood my question, although I have a great deal of regard necessarily for the information contained by any such gentleman who has gotten up such a wonderful set of books as this. I would not be willing to ascribe to him that he knew the operation of every railroad in the country. I asked him if he knew of any. He says here in his report, "It is the practice of railroads, it is the practice of the carrier to appoint attorneys"——

Mr. FOLK. This railroad.

Mr. KEEBLE. He said the practice of this carrier. Now, then, on examination he said that one thing that led him to believe this was because that was the practice of railroads generally. Now, I have asked him to name one railroad or one attorney on this railroad. Now, I do not know; I think when a man gets up, when the Interstate Commerce Commission sends out its emissaries and representatives to bring back facts and report summaries or great volumes of testimony that I at least ought to have the right to test the accuracy of his conclusion. I do not know, there may be—I have heard, I could tell him one I have heard of.

Mr. FOLK. Give him some instances where they have employed a man for a pass, if you know of any.

Mr. KEEBLE. I am not talking about the Louisville & Nashville Railroad at this time. I am asking him any other railroad that he knows. He said a while ago that was a practice among railroads.

Mr. FOLK. It is not a practice of other railroads, but it is the practice of the Louisville & Nashville Railroad and the Nashville, Chattanogga & St. Louis Railway.

Mr. KEEBLE. If he does not know any—I naturally thought to be fair to the witness. If he does know a railroad that has that practice and does not want to tell it—now, I may do him an injustice, but that is just the way I feel about it, and, of course, if he does know one——

Mr. FOLK. He may know some particular road that he may have investigated; I do not know; but it would not be fair to ask it, and under the law he could not do it.

Mr. KEEBLE. I say, leaving out any railroad he is investigating.

Chairman MEYER. Now, Mr. Keeble, I think you should have the fullest opportunity to inquire into the manner as to which the facts in these reports have been compiled, but the witness is an examiner of accounts. He has expressed in his report to the commission some conclusions. Now, it can not be very profitable to spend too much time on the witness's conclusion.

Mr. KEEBLE. If your honor feels that way about it——

Chairman MEYER. I think you should have the fullest opportunity to inquire into the accuracy of his work.

Mr. KEEBLE. I have had to spend a good deal of time on account of the obstinacy of the witness, but I have no doubt your honor is impatient about it, and naturally so, and I will pass on.

Chairman MEYER. Not at all.

Mr. KEEBLE. I do not mean any criticism of your honor, of course, because I know you are not in the habit of having controversies of this nature.

Chairman MEYER. I simply asked whether you think it is profitable to continue very far with respect to the conclusion of the examiner, who was sent out to gather facts.

Mr. KEEBLE. This is not the commission's conclusion; this is the examiner's statement of what he saw?

Chairman MEYER. I understand.

Mr. KEEBLE. I was not going on what the commission reported.

Chairman MEYER. If Mr. Carleton made an error in his calculations, if he did not properly examine the vouchers, I think that should be clearly brought out, so that the commission may be advised.

Mr. KEEBLE. The only thing I had on that, and I will not spend any more time on that, as I feel we have spent quite a great deal of time in going into moral philosophy and political science which really gets us nowhere, in so far as the orders of the commission or anything that could come out of this, so far as Tennessee is concerned, but I understand your own position, that you are going to let everybody go into this. Now, this matter was a matter that did touch me, because I knew that there was an unjust indictment against a group of men that I had been thrown with for 15 years, just as honest and just as true as any man in this hall. Now, I was trying to give him an opportunity to say that he really—after saying how he got at it—to say that it was entirely probable he had done these men an injustice, and he went on to insist that he was right about it. Of course, I will stop right now.

I want to ask one more question, and I think in justice to myself, I should say I was asking him this question rather to apologize for him, because it occurred to me that perhaps in a country where he had formerly lived he had been associated with railroad systems that did carry on this method, and that naturally when he got down into these books and did not see the thing open up in the year 1913 as richly to the attorneys as he thought it ought, and as perhaps they would have welcomed, he concluded that the same system was in effect down here that was up in his territory.

Now, Mr. Carleton, you have been on the stand a good while, haven't you?

Mr. **Carleton.** Yes.

Mr. **Keeble.** Yes, sir. And we have wrestled over considerable territory. When did these books that you have read from, these letters and these reports and these tabulations, when did you complete them and gather them together, how long ago?

Mr. **Carleton.** In the forepart of the year 1913.

Mr. **Keeble.** And then they were all turned over to the commission; isn't that right?

Mr. **Carleton.** Yes.

Mr. **Keeble.** And then the commission formulated its report to the Senate in regard to these pass matters when they got that?

Mr. **Carleton.** After the receipt of my papers.

Mr. **Keeble.** And that report was made on July 7, 1914. Now, all of this testimony was taken before that, was it not, that you read to-day?

Mr. **Carleton.** Yes, sir.

Mr. **Stone.** Not testimony.

Mr. **Carleton.** No; I will not say all the letters and things I read to-day, because there were some read to-day which had been collected on the Nashville, Chattanooga & St. Louis Railway since the presentation of the report.

Mr. **Keeble.** But all this bound up into books?

Mr. **Carleton.** Yes.

Mr. **Keeble.** And all this tabulation and all that list of names about State officials having passes; am I right about that?

Mr. **Carleton.** Yes; everything pertaining to 1913 or prior.

Mr. **Keeble.** So that what we have been doing to-day is just reading over to the commissioner and to the assembled people here everything that the commission has had and passed on in 1914; is that true?

Mr. **Carleton.** Yes, sir.

Mr. **Keeble.** That will do.

Mr. **Waller.** Mr. Chairman, before beginning my cross-examination of Mr. Carleton I would like to make this statement. I do not want to appear to take any improper time, but a serious indictment has been made against the management of the Nashville, Chattanooga & St. Louis Railway, which I represent, and a serious indictment has been made against many people in Tennessee as having been bribed and corrupted, many of whom stand high in their citizenship as people can be found anywhere. I feel it my duty, both on behalf of the Nashville, Chattanooga & St. Louis Railway and on behalf of the people who have received courtesies from the Nashville, Chattanooga & St. Louis Railway, to make a cross-examination of Mr. Carleton, and I trust, Mr. Chairman, you will be patient with me in that matter. I will try to be as brief as I possibly can.

Chairman **Meyer**. If you will kindly remember what was suggested this afternoon, that these reports should be introduced or accepted as exhibits for the facts they contain, and you realize, Judge Waller, that the examiners have expressed their opinions, but they were introduced for the facts they contain.

Mr. **Waller**. Yes; I understand.

Now, Mr. Carleton, as I understand, the examination of the records of the Nashville, Chattanooga, & St. Louis Railway as to the issuance of free transportation was made under your direction?

Mr. **Carleton**. Yes, sir.

Mr. **Waller**. When did this examination begin?

Mr. **Carleton**. The pass investigation, the particular work on the passes, I can not give you the exact date; I do not remember. Mr. Keene can remember the exact date he commenced. He was down here about the middle of forepart of January in connection with the general work on the Senate resolution, and that covered several subjects of the resolution at a time, considering them all simultaneously——

Mr. **Waller**. That was early in 1913?

Mr. **Carleton**. Early in 1914.

Mr. **Waller**. Early in 1914, when it began?

Mr. **Carleton**. Yes; but the exact date I could not state.

Mr. **Waller**. Was this examination at Nashville personally conducted by you or simply under your direction?

Mr. **Carleton**. Under my direction personally by Mr. Keene——

Mr. **Waller**. Who was the one who had direct charge at Nashville?

Mr. **Carleton**. Mr. Henry C. Keene.

Mr. **Waller**. When did you make your report to the commission?

Mr. **Carleton**. The report was made by Mr. Keene through—rendered direct to the commission, if I recollect, or close to that.

Mr. **Waller**. 1914.

Mr. **Carleton**. 1914.

Mr. **Waller**. How old are you, Mr. Carleton?

Mr. **Carleton**. Thirty-nine.

Mr. **Waller**. Do you recall that prior to and since the act to regulate commerce, passed first in 1887, that it had been the custom of railroads throughout the country to issue free transportation not only intrastate but interstate?

Mr. **Carleton**. Yes, sir.

Mr. **Waller**. Do you recall that even after the act to regulate commerce was passed in 1887 that the custom of issuing interstate transportation continued for many years?

Mr. **Carleton**. Yes, sir.

Mr. Waller. Do you recall the fact that there were a few decisions of the Interstate Commerce Commission bearing upon this question prior to 1906?

Mr. Carleton. Yes, sir.

Mr. Waller. And yet Congress felt it necessary in 1906 to pass a bill on the subject?

Mr. Carleton. Yes.

Mr. Waller. To prevent the issuance of any interstate free ticket. That was the language in 1906, was it not?

Mr. Carleton. The exact language I could not state from memory.

Mr. Waller. The act to regulate commerce—the amendment known as the Hepburn Act—in 1906 did not on its face or in terms undertake to prevent the issuance of intrastate transportation, did it?

Mr. Carleton. The act speaks for itself, Judge Waller.

Mr. Waller. Are you familiar with the act?

Mr. Carleton. Yes, sir; I should say that it did not.

Mr. Waller. On the other hand, it expressly prohibited the issuance of an interstate free ticket, did it not?

Mr. Carleton. Yes, sir.

Mr. Waller. And the impression would be gained from that that it was not the intention of Congress to undertake to regulate the issuance of intrastate transportation, would it not?

Mr. Carleton. I should say so.

Mr. Waller. And carrying out that idea, many States have passed since that acts prohibiting the issuance of intrastate passes, have they not?

Mr. Carleton. Yes, sir.

Mr. Waller. In other words, it was assumed by Congress that it had no authority over intrastate transportation, and the State has assumed that it had authority over intrastate transportation?

Mr. Carleton. No, sir.

Mr. Waller. Now, is it not a fact that after the Hepburn Act was passed that it has been a custom of railroads throughout this country, where there was no State act prohibiting it, that such free transportation was issued by such railroads?

Mr. Carleton. Yes, sir.

Mr. Waller. Now, Mr. Carleton, you furnished to the Interstate Commerce Commission, with reference to the transportation issued by the Nashville, Chattanooga & St. Louis Railway, a report, No. 372, and Reports Nos. 372A and 372B?

Mr. Carleton. Yes, sir.

Mr. Waller. It was upon these reports that the Interstate Commerce Commission made its final report to the Senate. Is that correct?

Mr. Carleton. I presume so.

Mr. Waller. In the report of the Interstate Commerce Commission to the Senate is the following:

> There is scarcely a walk of life which is not represented in this procession of recipients of passes from the Federal bench to the local politician and the sheriff who summons the jury. The threads represented by these passes tie thousands of citizens through improper relations. The lack of morality reflected by the facts here compiled is a menace to the institutions of a free people. These citizens who sell their influence quite as much as though they

accepted money bribes seem to be as willing to be tied as the carriers are ready to tie them. Men pledge their influence quietly in the home, or school, or club, in the professions, in business, in city councils, in administrative boards, in courts of justice, in legislative halls, and at the polls.

Mr. Carleton, did you prepare this report?

Mr. **Carleton**. I did not.

Mr. **Waller**. Do you know who did prepare it?

Mr. **Carleton**. No, sir.

Mr. **Waller**. I will ask you now to refer to these reports, 372, 372A, and 372B, and state the facts which sustain the proposition that men pledge their influence quietly in the home and school and club.

Mr. **Folk**. I object to that. The witness has stated he did not prepare the report. It is a report of the Interstate Commerce Commission, and he is merely an examiner of the commission and it is unfair to ask him to point out the evidence that the commission may have had in mind.

Mr. **Waller**. Mr. Chairman, I think that is thoroughly competent. Here is an indictment, not only against the management of the Nashville, Chattanooga & St. Louis Railway but against some of the best citizens of the State of Tennessee, and the indictment was based upon the facts which Mr. Carleton has furnished to the commission. He introduced them in evidence to-day, and I have not had an opportunity to go through them. I ask him now if he knows of any facts in this record which he has introduced to justify the statement that "men pledge their influence quietly in the home or school or club," and if he knows of such facts in these reports, to state them and tell me where they are.

Chairman **Meyer**. The witness may answer.

Mr. **Carleton**. I know nothing, only what the report itself states.

Mr. **Waller**. But, Mr. Carleton, I ask you if you know of anything in this record which you introduce which justifies the statement that men pledge their influence quietly in the home or school or club?

(No reply.)

Mr. **Waller**. You do not? You know of no facts in the record which you filed to establish that proposition?

Mr. **Carleton**. Other than the letters which have been read.

Mr. **Waller**. Well, state what letter. Let me have the letter.

Mr. **Carleton**. I can not give you any.

Mr. **Waller**. You can not give a single one?

Mr. **Carleton**. Not from recollection.

Mr. **Waller**. Well, I will give you time to examine the record and look for them. You can not furnish any?

(No reply.)

Mr. **Waller**. I will ask you if you know of any fact in this record or any letter which justifies the statement that men pledge their influence in the profession——

Mr. **Folk**. I submit that is unfair to the witness. As an examiner for the commission he can hardly be expected to point out the specific evidence upon which the commission based its report. Of course, he knows of all of these letters and all of the records that have been presented here that would bear out this, but when it comes to pointing what specific letter, it is hardly fair to ask the witness on the stand.

Chairman MEYER. Well, Gov. Folk, if the witness knows how to answer the question, I think we can save time by having the witness answer; if he knows what specific facts the commission has based certain deductions upon, of course he may tell.

Mr. CARLETON. I can not answer as to what facts the commission based the report upon.

Mr. WALLER. Then I will ask you, do you know of any fact in this record which you think justifies the statement that men pledge their influence in the profession, and if so, I want you to state it.

Mr. CARLETON. I can not answer that; I can not state any particular fact.

Mr. WALLER. You do not know of any?

Mr. FOLK. You do not know what the commission had in mind?

Mr. CARLETON. No.

Mr. WALLER. Mr. Folk, I do not think it is proper to suggest answers to the witness. I think Mr. Carleton is an experienced man, and he made this record, and I am asking—he is familiar with the record, and he compiled it and I am not familiar with it, and I want him to point out to me if he knows of any fact which justifies the statement that men pledge their influence in the profession. I think that is a fair question, because he is familiar with this record.

Chairman MEYER. The witness may answer.

Mr. WALLER. You do not know?

Mr. CARLETON. Before I answer that I would like to see Exhibit 372B [witness examines exhibit].

Mr. WALLER. Are you ready?

Mr. CARLETON. Your statement was as to the profession?

Mr. WALLER. Yes; in the profession.

Mr. FOLK. He is asking the witness, Mr. Chairman, to sustain the report of the commission. The witness had nothing whatever to do with the report, and the record speaks for itself. If the matter were ready for argument, the record would abundantly sustain what was stated in the report, and it is hardly fair for the witness to attempt to pick out from the evidence while he is on the stand the portions of the evidence that may be said to sustain the report. That is a matter of argument. You might as well expect a master in chancery to point out in the evidence the things that sustain what is said by the opinion of the court after he makes his report.

Chairman MEYER. If the witness can answer this question, in whole or in part, he may do so.

Mr. CARLETON. It is just a matter of——

Chairman MEYER. But you understand, Judge Waller, that the witness was not consulted about the preparation of the report of the commission.

Mr. WALLER. Of course, I take that for granted, but as he made the record and is familiar with it, I wanted to know if he knew of any facts that sustained or tended to sustain that conclusion.

Chairman MEYER. In other words, you would like to have him point out what he thinks the commission had in its mind when it made its report?

Mr. WALLER. No; what he has in his mind to sustain that statement.

Chairman MEYER. Well, if the witness knows, he should tell.

Mr. CARLETON. Well, I would take practically all these letters which I have here, which would seem to me to indicate in a general way that there were motives of that nature.

Mr. WALLER. I am asking you as to the profession. I do not know; of course, that means lawyers and doctors.

Mr. CARLETON. Here is one:

Archie E. Ray, M. D., Tullahoma, Tenn., May 6, 1913—

His letter to Mr. Frank McConnell of that State, in which he states:

> I am summoned to appear at Manchester on Friday of this week as witness in a case against the company. You know how I would feel as witness against you people, and would rather have business somewhere else, as they will have me go if I remain in town So I wish you would send me up a pass for self and wife to Nashville, as I think I might have important business at that end of the line just before the case is called.

Mr. WALLER. Do you think that man sold his influence for a pass?

Mr. CARLETON. I would not make as broad a statement as that for that particular party, but it would indicate that he was desirous of not appearing against the carrier at all and wished to absent himself at the time when he was called upon, and requested transportation to get out of the way.

Mr. WALLER. Well, I ask you now if you think that that shows that that doctor sold his influence for that pass?

Mr. CARLETON. No; I would not undertake to say so.

Mr. WALLER. Is that the only letter you can give?

Mr. CARLETON. Those are the only letters—I do not believe I am competent to pick out any particular letters in that case to answer that question.

Mr. WALLER. Then, as I understand, you do not know of any facts in this report which sustain the proposition "that these citizens who sell their influence quite as much as though they accepted money bribes seem to be as willing to be tied as the carriers are ready to tie them. Men pledge their influence quietly in the home or school or club, in the professions, in business, in city councils, in administrative boards, in courts of justice, in legislative halls, and at the polls." You do not know of any facts in this record which you prepared which sustain that statement?

Mr. CARLETON. I do not know of any other than these letters.

Mr. WALLER. Now, I want to go back to your letters. You just gave me that about the doctor and said you did not think that would justify that statement. What other letter have you reference to? Let us be definite about it.

Mr. CARLETON. Well, that may be a broad statement, possibly, that I personally might not make against the particular individuals receiving them.

Mr. WALLER. What is that?

Mr. CARLETON. I said I would personally not make that allegation, possibly, against each and every recipient of a pass.

Mr. WALLER. Now, do you know, "in the courts of justice"—of course, I do not know what that means. Does that mean judges, or do you know?

Mr. CARLETON. I do not know what the commission had in mind.

Mr. WALLER. You do not know what the commission had in mind there. Now, do you take the position, or is it the spirit of your report, that because a man receives a pass he has sold his influence and is that what you intended to reflect in your report—that idea?

Mr. CARLETON. I did not intend to reflect any particular thing in the report, as to what he sold; merely the fact that he received this transportation would make him possibly at least receptive to the carrier's desire, if he could be of any benefit, as the governor put to the witnesses occasionally, the sense of gratitude which might follow from accepting it.

Mr. WALLER. Do you mean to say that in your judgment a person who received a pass at his request from a railroad company would feel under obligations to do something that was wrong or immoral for that company?

Mr. CARLETON. Not necessarily; no, sir.

Mr. WALLER. You would not go that far, would you?

Mr. CARLETON. No.

Mr. WALLER. For illustration, you would not insist that letters of this nature showed any improper influence on the part of the party. I want to ask you specifically if you do? For instance, take this letter written on June 20, 1911, as follows:

DEAR JUDGE WALLER—

No, I have the wrong date. Let me go back of that. Take this letter of December 12, 1910:

[Nashville Tennessean and American.]

Judge CLAUDE WALLER, *City*.

DEAR SIR: Referring to our conversation of to-day regarding transportation in lieu of that turned over to us by the Nashville American, would say that it should be made out in the name of the Nashville Tennessean and American, and the same to be countersigned by the writer. This transportation has in the past been covered by two annual passes. We will appreciate your courtesy in this matter.

Now, suppose that the Nashville, Chattanooga & St. Louis Railway, in accordance with a custom, complies with that request and sends the passes, and the acknowledgment of the receipt is made as follows:

DEAR SIR: This acknowledges receipt of the card and trip transportation accompanying your letter of December 19. The old book and cards are returned herewith. I note that the book sent will have to be renewed after December 1, and will appreciate your doing this for us.

Thanking you for your courtesy in this matter, I beg to remain,

Very truly, yours,

HERMAN SUTTER, *Publisher*.

Do you think that would indicate that that paper was bribed or that it had sold its influence to the Nashville, Chattanooga & St. Louis Railway by the acceptance of this transportation?

Mr. CARLETON. Not in those terms that you have given; no, sir.

Mr. WALLER. Let us go on with that. To what extent would you say that it had?

Mr. CARLETON. Sir?

Mr. WALLER. To what extent would you say that it had been influenced?

Mr. CARLETON. Well, I would not—the reply itself would not indicate that it had been influenced, I would say.

Mr. **WALLER**. And the mere fact that a newspaper received transportation of that sort under a custom that had been in existence for many years would not indicate that either the newspaper was selling its influence to the railroad or that the railroad was attempting to influence the newspaper; now, is not that correct?

Mr. **CARLETON**. In that particular case it would appear that way.

Mr. **WALLER**. Now, what would be the difference in this particular case and most of these cases?

Mr. **CARLETON**. If the statement is made in reply to the effect that the paper would not publish certain—if it was in possession of facts of some kind that it might wish to suppress that would be derogatory—I will say any facts which would reflect on the carrier and would indicate that in its letter that on account of the receipt of the pass it would suppress the publication of something of that sort or intimate to that effect, it would seem that that would indicate it was given for a specific purpose.

Mr. **WALLER**. What would constitute an intimation of that sort?

Mr. **CARLETON**. Well, I could not give you an example, exactly. If you could read something, I could tell you whether that was of that nature.

Mr. **WALLER**. I will perhaps get one and ask about it.

> DEAR JUDGE WALLER: Many thanks for complying with our request of this morning for transportation for one of our representatives, Mr. A. A. McCortel; and if we can serve you in any way at any time, please command us. We are always ready to reciprocate.

What would you regard that? That is signed "Tennessean and American; J. H. Allison, business manager."

Mr. **CARLETON**. Well, that would lead one to the impression that the publisher of the paper was possibly willing to or might reciprocate by any favors he could in any way, if he was asked; possibly, not to make a piece of news as prominent as it might otherwise appear; not to do so.

Mr. **WALLER**. I will show you later that they did not mean that.

Mr. **CARLETON**. Of course, I do not know what they had in mind when they wrote.

Mr. **WALLER**. Now, take this—January 7, 1913; that is getting into this famous year:

> Mr. J. B. DE VOE,
> *Nashville, Chattanooga & St. Louis Railway, City.*
>
> DEAR SIR: Many thanks for your kindness, which we can assure you is appreciated. This, of course, acknowledges your letter of the 2d, in which you inclosed three complimentary passes—755, 756, and 757—in favor of representatives of the Tennessean and American, and 11758 in favor of the writer personally.

That is, four card passes.

> Your instructions will be followed closely regarding the trip passes to be used in connection with the representative card pass. If we can be of any further service to you, do not hesitate to command us.
>
> Thanking you again, we are,
>
> Yours, truly,
>
> THE TENNESSEAN AND AMERICAN,
> J. H. ALLISON, *Business Manager.*

Would you regard that as having sold its influence or pledged its influence in favor of the railroad?

Mr. CARLETON. The inference from the letter would indicate to me, possibly, that it had rendered some service to the carrier, but as to the extent or the magnitude I could not tell.

Mr. WALLER. This is for the future; it says:

> If we can be of any further service to you, do not hesitate to command us.

Now, just what service it had been I do not know; we may find out later.

Mr. CARLETON. I say it would indicate it had been of some service.

Mr. WALLER. That they had been serving the railroad in some way?

Mr. CARLETON. That would be the conclusion one would naturally draw.

Mr. WALLER. Well, we will have that later. Now, let us take—do you know when the Senate resolution was introduced in the United States Senate?

Mr. CARLETON. No; I do not recollect the date.

Mr. WALLER. It was somewhere in 1913, was it not?

Mr. STONE. It was in the summer of 1913, and was adopted November 6.

Mr. WALLER. That Senate resolution was passed in November, 1913, was it not, Mr. Carleton?

Mr. CARLETON. I do not know.

Mr. WALLER. You do not know?

Mr. CARLETON. No.

Mr. WALLER. I want to read you this:

> DECEMBER 13, 1913.
>
> NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *City.*
>
> DEAR SIR—

They quit saying "Dear Judge Waller" or "Dear Mr. Waller." It is now the "Nashville, Chattanooga & St. Louis Railway."

> DEAR SIR: Thanks for your letter of the 10th and book of trip passes. They will not be used after the first of the year, when the matter will be taken up with you.
>
> Yours, truly,
>
> THE TENNESSEAN AND AMERICAN.
> J. H. ALLISON.

Now, what I am reading these for is to see if you think that the Nashville Tennessean and American had either pledged its influence in this community to the Nashville, Chattanooga & St. Louis Railway Co. by requesting and receiving this transportation during these years.

Mr. CARLETON. The only two letters that you have read, the one before this and the one before that, would indicate to a person reading it that it had been of some service of some kind to the road.

Mr. WALLER. Then you would say that the Nashville Tennessean and American had sold its influence to the Nashville, Chattanooga & St. Louis Railway for some free transportation?

Mr. CARLETON. I would not put it that strong.

Mr. WALLER. Well, that is what you put in about these other people. Now, why would you not put it about them?

Mr. CARLETON. I do not think I said that about any of the people, that they had sold their influence. That is not my language. That language of the report is not mine but the commission's.

Mr. WALLER. Then you do not think they did sell it, do you?

Mr. CARLETON. I do not know what they did.

Mr. WALLER. Well, just from this correspondence, do you think they sold it?

Mr. CARLETON. It is a broad statement to say that they sold influence on the basis——

Mr. WALLER. Yes, it is a broad statement; but that is what I am after. It is a pretty harsh statement, too, is it not, to say that when they had been accustomed to give newspapers transportation and for newspapers to receive it, is it not a pretty hard thing to say that the newspaper had sold itself or that the railroad had bought it? Is not that a pretty harsh statement?

Mr. CARLETON. Yes; I believe it is.

Mr. WALLER. Now, suppose that members of the legislature had received transportation under similar circumstances, under a custom that had been in vogue for many years, and that requested transportation for their constituents and that received it without any promise on the part of one, that they would vote this way or that or the other, without any request on the part of the other that they should do so, would you say they had sold themselves as if for money bribes and had sold their influence to the railroad?

Mr. CARLETON. Under the general way in which it was given I do not believe that I would make the statement that a man had deliberately sold himself for a bribe, but I would still think the fact that he had always been getting the passes would lead him to be friendly, at least just the same as a person——

Mr. WALLER. Well, would that necessarily follow, if a custom existed; is it not a fact that many did get them and have appeared here and said that they voted against bills which the railroad wanted? Did not one gentleman say he came to the legislature pledged to vote for anything labor organizations wanted against railroads, and that he received transportation the same as others?

Mr. CARLETON. I think so.

Mr. WALLER. Then, under those circumstances, do you think it is fair to say that members of the Legislature of the State of Tennessee have sold themselves to the railroad because they received transportation?

(No reply.)

Mr. WALLER. Will you answer that?

Mr. CARLETON. Well, it is rather a broad statement.

Mr. WALLER. It is rather a broad statement. Now, you have in your list of people who have received card passes from the Nashville, Chattanooga & St. Louis Railway some of the best citizens of the State of Tennessee. For instance, take in 1913, the positions of secretary of state, comptroller, and treasurer, and the commissioner of agriculture and the commissioner of public instruction. They received their passes according to a custom that had existed for many, many years. Do you think that those people had sold their influence to the railroad by virtue of such transportation?

Mr. CARLETON. I would not say that every person that received a pass had sold his influence.

Mr. WALLER. No. Is it not a fact, and do you not know enough about those questions of free transportation in the States to know that men of that character and type do not sell their influence for transportation?

Mr. Carleton. I have never—I do not know of any particular instance where I have heard of any person of that caliber or type that it had been directly shown that he had.

Mr. Waller. Well, has it been indirectly shown, in this report that you make, that these men were bribed, as if they had taken money and sold their influence to railroads by the reception of this transportation?

Mr. Carleton. It would only indicate in my mind that the fact that they were granted those favors would render them favorably impressed toward the carriers. That would be my impression.

Mr. Waller. You think that is true?

Mr. Carleton. In that way. Not necessarily——

Mr. Waller. Nothwithstanding the fact that it is general through a custom that has existed for many years, yet if the custom is continued when they get in office, that they feel that they must do something wrong to show their gratitude?

Mr. Carleton. Not that. The fact that they receive the transportation and use it would seem to indicate that they would at least not be hostile to the carrier. If so, if they were hostile to the carrier, it would not seem, if they were men of integrity, that they would receive favors from them.

Mr. Waller. You think, then, that a man who was hostile to the carriers and received transportation from them was not a man of integrity?

Mr. Carleton. I would not say so, but I would say that men——

Mr. Waller. Have not some good men been before this commission stating they were opposed to what the railroads wanted and went to the legislature on such platforms and received transportation, and yet you say they are not men of integrity?

Mr. Carleton. What I meant to convey was that if they had any enmity toward the carriers and still accepted transportation——

Mr. Waller. Suppose they were pledged by the county platform upon which they were elected to vote for measures demanded by labor organizations, which were very exceedingly hostile to railroads, and would cost the railroads of this State five or six or seven hundred thousand dollars, and that yet they came up and got their transportation as others got it, and yet they voted and carried out their platform, you would say they were not men of integrity?

Mr. Carleton. No; I would not want to put it that they were not men of integrity.

Mr. Waller. No, no, no. It would be a harsh thing to say of them under the circumstances, would it not?

Mr. Carleton. Because if they were elected by the people they would feel that they were bound by the platform unless the bill was directly injurious to the railroads, and they felt that it was injurious to the railroads, honestly felt that it was injurious to the railroads, and then voted for it, after receiving the transportation, it would seem they were something of that kind.

Mr. Waller. A man might think it would injure them in a pecuniary way, but it was a just piece of legislation?

Mr. Carleton. Then, I think he ought to vote that way.

Mr. Waller. And he would not be a man lacking in integrity because he had accepted transportation, would he?

Mr. Carleton. No.

Mr. Waller. Now, is it not a fact that this custom has grown up all over the United States, and is it fair to say that men who have accepted transportation from railroad companies have, under such circumstances, sold their influence to them, or been bribed by railroad companies, under such circumstances?

Mr. Folk. The witness is not the judge of that question. He is not sitting here in the capacity of a judge. He is here merely to testify as to facts.

Mr. Waller. But, Governor, as I recall, nearly every witness you put on the stand here yesterday and to-day you have made an expert and asked him, in his opinion, was it a good or bad practice.

Mr. Folk. The witness has qualified——

Mr. Waller. He was not testifying as to facts. Now, I am asking your witness what he thinks about it.

Mr. Folk. The witnesses were asked as to their opinion as to the enactment of an antipass law by reason of their experience. That is one thing. The opinion you ask of this witness is quite another matter.

Mr. Waller. No; you asked him what his opinion would be, whether it was a good or bad thing. Now, it seems to me if that was competent this would be competent.

Chairman **Meyer.** I think if the witness has opinions that he wants to express, and has them well enough formulated to express them, he may well enough answer. But do you not think there is a distinction between asking this of members of the legislature who have charge of the duty of making laws and asking their opinions about the effect of the law or proposed law——

Mr. Waller. But some of these gentlemen are not now charged with the duty of making laws. Many of them were asked this who are not members of the legislature, but mere citizens.

Chairman **Meyer.** I understand, but asking an examiner of accounts about the merits of such things is quite a different thing.

Mr. Waller. Still, here is a report made on the basis of the examiner's report, and I would take it, perhaps, that the opinions of the commission are reflected from the facts stated.

Chairman **Meyer.** Well, may I suggest that the fact would go to the practice of passes or distribution of passes, whatever the report shows, so far as facts go, correspondence and all that, which was before the commission.

Mr. Waller. But we have been going into the moral question here a good deal to-day.

Chairman **Meyer.** And you wanted to contribute your share, and I think you have done so.

Mr. Waller. I wanted to see what an examiner of the Interstate Commerce Commission thought on this moral question, and I have felt that perhaps if the opinions of the other witnesses were important that perhaps his might be.

Now, who selected these letters that were made the basis of your report in 372B, is it?

Mr. Carleton. 372B.

Mr. Waller. 372B.

Mr. Carleton. Mr. Keene.

Mr. Waller. Mr. Keene?

Mr. Carleton. Yes, sir.

Mr. Waller. You did not select those?

Mr. Carleton. No.

Mr. Waller. You selected those for the Louisville & Nashville Railroad?

Mr. Carleton. Yes, sir.

Mr. Waller. And you were of the opinion that those letters showed that men had been bribed by transportation?

Mr. Carleton. I was of the opinion that the letters showed that the transportation was appreciated, and in many instances, it would indicate that they were received and given for a purpose which would be beneficial to the carrier and for purposes or things which could not be secured in any other way.

Mr. Waller. Now, I am going to ask you this: Did you write this?

> Under the heading "Judges," in Appendix A, Exhibit 13A, schedule 9, is recorded a pass issued to Judge Walter Evans, of the United States district court of the western district of Kentucky. Judge Evans is the judge who handed down the decision in favor of the Louisville & Nashville Railroad in the case of the Government's recent petition for a writ of mandamus to compel the carriers to produce all of its records and correspondence for inspection by examiners of the commission. The records do not disclose any use of this pass by Judge Evans, but they do show that he made use of a pass held by him in 1912.

I want to ask you to construe that language.

Mr. Carleton. To construe it?

Mr. Waller. Yes.

Mr. Carleton. In what way? It is a statement of fact.

Mr. Waller. Did you mean to say in that that Judge Walter Evans had handed down a decision in that case on account of favors done him by the Louisville & Nashville Railroad?

Mr. Carleton. I meant to put the information to the commission, in speaking of a judge, that both those were one class of the officials that we classified, that Judge Evans was the judge that had handed down the decision.

Mr. Waller. Why did you say that "Judge Evans is the judge who handed down the decision," if you did not mean that he had been influenced by that pass, to hand it down?

Mr. Carleton. It indicated that Judge Evans had been receiving transportation from the carriers, and I wished the commission to be informed of that fact.

Mr. Waller. To be frank, Mr. Carleton, did you not mean to insinuate that Judge Evans had been influenced by that pass to give that opinion?

Mr. Carleton. Oh, I do not believe that the single pass issued to Judge Evans would influence him in that decision.

Mr. Waller. What do you think; two would?

Mr. Carleton. I am not——

Mr. Waller. How many do you think it would take to influence him?

Mr. Carleton. I would not impute anything to Judge Evans.

Mr. Waller. Now, Mr. Carleton, you meant something by that. Now be frank here and state precisely what you did mean.

Mr. Carleton. I meant simply what I stated.

Mr. Waller. Did you not mean to insinuate that Judge Evans had been corruptly influenced by that transportation?

Mr. **Carleton**. No; I meant just as it is stated there, the statement of facts as I found them in the record.

Mr. **Waller**. But those facts were put there for a purpose, and I am asking you for what purpose?

Mr. **Carleton**. To acquaint the commission with the facts.

Mr. **Waller**. Was it in the record that Judge Evans had decided this case?

Mr. **Carleton**. Sir?

Mr. **Waller**. Was it in the record of the Louisville & Nashville Railroad that Judge Evans had decided this case?

Mr. **Carleton**. No, sir.

Mr. **Waller**. You were instructed by the commission to examine for passes. You found one for Evans, and in making that statement in your report you made special mention of that fact as to Judge Evans, and said, following it:

> Judge Evans is the judge who handed down the decision in favor of the Louisville & Nashville Railroad in the case of the Government's recent petition for a writ of mandamus to compel the carrier to produce all its records and correspondence for inspection by examiners of the commission.

Did you not mean something by that?

Mr. **Carleton**. I meant just as the language of the record states.

Mr. **Waller**. You did not mean anything by it?

Mr. **Carleton**. I can not read anything further into it than is in the report.

Mr. **Waller**. Is it not your idea, and did you not go upon this investigation with the idea, that everybody who received a pass was a crook?

Mr. **Carleton**. No, sir.

Mr. **Waller**. Is not that the same decision which the Supreme Court of the United States said was correct and proper under the law?

Mr. **Carleton**. Yes, sir.

Mr. **Waller**. And did they not so hold unanimously?

Mr. **Carleton**. I am not acquainted as to the manner in which the decision was rendered, whether it was unanimous or otherwise.

Mr. **Waller**. Now, Mr. Carleton, in your preliminary report of free transportation by the Nashville, Chattanooga & St. Louis Railway you say this:

> There were issued by the carrier to and at the request of so-called company attorneys, not retained through the payment of regular compensation and not considered as devoting substantially their entire time to its service, 291 annual, term, and trip passes.

What did you mean by saying "so-called company attorneys"?

Mr. **Carleton**. What is the title of the report, Judge Waller; what is the number of the report?

Mr. **Waller**. The title is "Free, 372."

Mr. **Carleton**. Three hundred and seventy-two?

Mr. **Waller**. Yes.

Mr. **Carleton**. Those are Mr. Keene's words, Examiner Keene, who wrote that portion of the report.

Mr. **Waller**. You do not know what he meant by that?

Mr. **Carleton**. I believe Mr. Keene will answer.

Mr. **Waller**. Well, would you regard that as a correct statement? You are familiar with the report?

Mr. Carleton. Well, if I had been writing it, knowing what went in, I would have written it more like I did mine, as to attorneys who were not considered as devoting substantially all their time to the services of the carriers, I think——

Mr. Waller. Did you not make this your language when you made your report to the Interstate Commerce Commission?

Mr. Carleton. Sir?

Mr. Waller. Did you not make this your language when you made your report to the Interstate Commerce Commission?

Mr. Carleton. No; that report was rendered direct to the commission.

Mr. Waller. You did not make this report?

Mr. Carleton. No.

Mr. Waller. Did you make the report in these books?

Mr. Carleton. No; I did not make them. As I said, the general supervision of the manner in which the report was to be made was under my supervision.

Mr. Waller. You made this your evidence, did you not?

Mr. Carleton. As having been——

Mr. Waller. You made this your evidence?

Mr. Carleton. As having been——

Mr. Waller. And you swore this morning that it was correct, did you not?

Mr. Carleton. I do not remember of any swearing that it was correct—only what——

Mr. Waller. Did you not state that all the facts were correct? We excepted to this, and they said they would put it in as to the facts, and that you swore to the facts that were in there.

Mr. Carleton. I stated as to the facts, in so far as what I had reference to was any figures or statements of compilations of passes that had been used and issued, and as to the language of the report——

Mr. Waller. You are not then acquainted with the character of men who wrote this company, who represent this company in this State as lawyers?

Mr. Carleton. No, sir.

Mr. Waller. You do not know anything about them?

Mr. Carleton. No, sir.

Mr. Waller. But notwithstanding that, while supervising this whole thing, you permitted this to go to the Interstate Commerce Commission as a slur upon the representative attorneys of the Nashville, Chattanooga & St. Louis Railway in the State of Tennessee by calling them so-called company attorneys?

Mr. Carleton. I did not revise that report and I think if—Examiner Keene will probably tell you what he had in mind. Knowing what I had in mind at the time. I would interpret that as I think Mr. Keene intended it to be, the company's attorneys that were so designated but were not giving or devoting a substantial portion of their time to the company.

Mr. Waller. Now, is that different? I will ask you this: You are an experienced man in these matters. Where a railroad company, say in a State, has eight or nine hundred miles of railroad in operation, running through 35 or 40 counties in the State, is it unusual for that railroad company to have a retained attorney in each county through which it operates?

Mr. CARLETON. Well, I am not familiar with all of the carriers to know whether they retain counsel or not.

Mr. WALLER. Well, you know enough about a great many of them to know that is a usual thing, do you not?

Mr. CARLETON. A lot of them retain attorneys, a regular legal force.

Mr. WALLER. Well, suits are liable to be brought against a railroad company in any county through which it runs, are they not?

Mr. CARLETON. Yes, sir.

Mr. WALLER. Well, they have got to have some local attorney there to represent the road, have they not?

Mr. CARLETON. I presume so.

Mr. WALLER. Is there anything improper—you would not suggest a policy of getting a different attorney every time a case was brought, would you? Would you not think the proper organization would be to retain an attorney in that county to take charge of all the litigation that might be brought there?

Mr. CARLETON. Yes, sir.

Mr. WALLER. Now, if that be done, would there be any justification in saying "so-called company attorneys"?

Mr. CARLETON. As I stated before, I do not know what Mr. Keene had in mind at that time, and I can not say.

Mr. WALLER. That is all.

Redirect examination:

Mr. FOLK. In making this report as to free passes issued by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway you reported all free passes that you found, according to the record, were issued, except as to those people, under the act to regulate commerce entitled to them: was that your idea?

Mr. CARLETON. Yes.

Mr. FOLK. And with reference to these attorneys and the question whether or not a salary was paid to an attorney, it was material only in determining whether the attorney was an employee of the carrier under the terms of the act to regulate commerce?

Mr. CARLETON. Yes, sir.

Mr. FOLK. And thereby entitled to a pass under the act to regulate commerce?

Mr. CARLETON. Yes, sir.

Mr. JOUETT. Do you mean to infer that an attorney is not entitled to a retainer?

Mr. FOLK. Not at all. I am asking him a question. The statement in the report with reference to attorneys refers to lawyers who were paid only by passes or where no substantial payment appeared in the vouchers except the passes. That statement had no application to the names of the particular lawyers who Mr. Keeble says were paid actual fees for actual cases.

Mr. CARLETON. If they performed no services during the year and were not paid any fees for services performed, they were included in there, Governor.

Mr. FOLK. The statements that you made had reference to instances where attorneys were paid only by passes or when there was no substantial payment appearing in the vouchers?

Mr. CARLETON. Yes, sir.

Mr. **Folk**. And if, as Mr. Keeble states, the gentlemen to whom he refers were paid actual fees in actual cases, the statement that you spoke of has no reference to them?

Mr. **Carleton**. If they were—I would like to refresh my memory with my statement, but I am of the impression if they were paid any fees for services rendered during that period they were no included in that statement.

Mr. **Folk**. Turn to your letter file there and give us some illustrations of attorneys to whom you referred who are paid only by passes.

Mr. **Carleton** (reading):

[**Louisville & Nashville Railroad Co. Law department for Illinois. James M. Hamill, district attorney; Charles P. Hamill, assistant district attorney and law agent.**]

Belleville, Ill., *January 4, 1913.*

Col. H. L. Stone, *General Counsel.*

Dear Sir: I want to appoint Mr. B. B. Holston, local attorney at Nashville, Ill., and desire to have annual pass for 1913, good on St. Louis division, issued to him as such local attorney. We only have two local attorneys in Washington County, Mr. James A. Watts and H. H. Hosmer, and from the information I have in reference to Mr. Holston I think it would be to the interest of the company to have him made local attorney in consideration of his performing the duties of local attorney for an annual pass.

If this meets with your approval, please have pass issued to him as local attorney and send it to me.

Yours, truly.

J. M. Hamill.

Mr. **Folk**. Was the pass issued?

Mr. **Carleton**. The record here does not show. I would have to refer to the report.

[**Lexington & Eastern Railway Co. General offices. W. A. McDowell, manager.**]

Lexington, Ky., *October 22, 1913.*

Mr. W. L. Mapother,
First Vice President Louisville & Nashville Railroad Co.,
Louisville, Ky.

Dear Sir: Replying to yours of 20th instant, 88631, in re transportation to R. C. Musick, etc., and returning herewith all papers, I attach the original agreement signed by Mr. Musick on February 18, 1913.

Mr. Musick is what might be described as an "ambulance-chasing" lawyer, and was inclined to annoy us not only in this way, but through articles in his paper, and we therefore thought it advisable to stop the former absolutely and modify the latter by giving him the transportation; and I would therefore recommend we consider that he still owns an interest in the paper, and permit him to retain the pass, and if you feel so inclined, to grant trip transportation to some other representative of the paper.

Yours, truly,

W. A. McDowell, *Manager.*

Encl.

Mr. **Folk**. Was the pass issued?

Mr. **Carleton**. I think so.

Mr. **Folk**. There is a contract?

Mr. **Carleton**. The record would show as to that.

Mr. **Folk**. Read the contract of employment of this attorney.

Mr. **Carleton** (reading):

This writing witnesseth, that the Lexington & Eastern Railway Co. has issued to me an annual pass over its lines, which I accept as a retainer and agree in consideration of same to accept employment in no suit or other claim against said railway company during the year 1913. I further agree to represent said railway company and to assist its counsel when called upon, and for any such services I am to be paid in addition to said pass a reasonable fee for such services.

This contract is not to affect my right to prosecute suit heretofore filed by me as attorney in cases against said company. This February 18, 1913.

RYLAND C. MUSICK.

Mr. **FOLK**. So his employment was only represented by a railroad pass?

Mr. **STONE**. I beg pardon.

Mr. **KEEBLE**. You have not read the latter part of the contract.

Mr. **FOLK**. Read it.

Mr. **CARLETON** (reading):

> I further agree to represent said railway company and to assist its counsel when called upon, and for any such services I am to be paid in addition to said pass a reasonable fee for such services.

Mr. **FOLK**. The employment was represented by a railroad pass, except that he was paid fees in certain cases?

Mr. **CARLETON**. Yes.

Mr. **FOLK**. For cases where he is employed?

Mr. **CARLETON**. Yes.

Mr. **FOLK**. Have you another letter there with reference to the employment of attorneys?

Mr. **CARLETON** (reading):

> DAYTON, TENN., *March 19, 1915.*
>
> Judge CLAUD WALLER,
> *General Counsel for N., C. & St. L. Ry., Nashville, Tenn.*
>
> DEAR JUDGE WALLER: As you doubtless know the governor has conferred upon me the great honor of appointing me attorney general of the eighteenth judicial circuit, and in order to reach the majority of the counties, in fact, five out of eight in this circuit, I have to go over your railroad, and my son Gordon McKenzie will be my assistant.
>
> I will appreciate it very much if you will send me card passes, for all of which I will feel very grateful indeed. I expect that Joe Brown, of the firm of Brown, Spurlock & Brown, has already taken this matter up with you.
>
> I, of course, would be glad, if you need such, to act as your local counsel in the circuit court in any one of these counties—for instance, Bledsoe or Sequachie. In my circuit are the counties of Franklin, Grundy, Marion, Sequachie, and Bledsoe on your road, and you can fix any kind of a nominal compensation; you see the point?
>
> Kindly thanking you for this great favor, and hoping that I can at some early date serve you, and you will command me, I beg to remain, as ever,
>
> Your friend,
>
> B. G. MCKENZIE.

Two card passes issued.

Mr. **WALLER**. Now, have you the answer to that letter?

Mr. **CARLETON**. I have not.

Mr. **WALLER**. Well, it was in the file, and you will find that I told him we could not employ him as local attorney, and those passes were issued as attorney general's, which has been the custom in this State for many years.

Mr. **FOLK**. Now, can you find your statement of the amounts paid local attorneys?

Mr. **CARLETON**. No. I do not think it is in any of these records. That was worked up and kept in our working papers, I am almost positive. I would like to wait until morning, and get a chance to look at the papers.

Mr. **FOLK**. Will you look them up and file it as an exhibit to your testimony, if it is not already in one of the exhibits filed?

Mr. CARLETON. Yes.

Mr. STONE. We want our attention called to it.

Chairman MEYER. I was about to suggest, and make copies so counsel will be advised.

Mr. STONE. We will want to know in what period this amount was paid to each of the attorneys.

Mr. FOLK. 1913, I understood the witness had referred to.

Chairman MEYER. Should it not be confined to 1913?

Mr. STONE. Not necessarily. These attorneys may have been attending to one or more suits long prior to that time, or even after that time, and received no part payment or full payment in that particular year. That would not prove they were not regular attorneys and rendering important services.

Chairman MEYER. I understand, Mr. Folk——

Mr. STONE. The most important services rendered the Louisville & Nashville Railroad Co., to my knowledge, are by attorneys that are not on a salary, who are in regular practice and take all sorts of cases for all sorts of clients, and they are the ablest attorneys and render the most important service of any attorneys we have.

Chairman MEYER. My suggestion regarding 1913 rests upon the fact that these statistics have been compiled for 1913.

Mr. STONE. Yes; I know, but lawyers are not paid by the year often, in that way, where they are paid reasonable fees. They are not paid by the month, and often a year passes and they do not receive a cent, yet they may receive enough the year before or the year after to compensate them for several years if they were on a salary.

Mr. KEEBLE. As an example of that, take the case of Henderson & Henderson. Mr. Henderson resigned in 1913, along toward the close of the year, and he had represented our company there, not only as representing the regular Louisville & Nashville line but has represented the Lewisburg & Northern, which was controlled by the Louisville & Nashville, and when he retired there was a difference of opinion as to his compensation for the years 1912 and 1913, and he claimed some $4,000 or $5,000, about $4,000, I believe, and I thought that was too much, and for that year there was no adjustment of his account, and subsequently I paid him one settlement of $2,500 for services rendered in condemnation cases, in addition to other cases.

Mr. STONE. The payment being after 1913 and the service rendered before that year?

Mr. KEEBLE. Yes; and during 1913.

Chairman MEYER. So we may not get too far afield, on that basis, Mr. Keeble, while, of course, it is perfectly apparent that services may have been performed in 1912 and paid in 1913, or performed in 1913 and paid in 1914, it is not likely that all the payments were made in 1912 and 1914 and not in 1913. Would not that average itself up in a term of years?

Mr. KEEBLE. Ordinarily it does. It does not always do that.

Chairman MEYER. Can not we afford to dispense with going back of the accounts worked up to the present time?

Mr. KEEBLE. I do not think that is material, except in so far as I was trying to show that these statements made about these attorneys were not correct or just to them.

Mr. Folk. It does not apply to attorneys who are paid——

Mr. Keeble. He has made it to apply.

Chairman Meyer. Right on that, if the accounts as summarized in this report by the examiners are not correct for 1913, now that is something that the commission wants to know. Now, it does not require argument to show that accounts for 1913 would not show the course of things for a period of five years; but if for 1913 it is not correct, then, of course, the commission would like to be advised.

Mr. Keeble. Of course. Take J. W. Lewis, of Paris, in 1913 he had been on a salary or a retainer of $600 for 10 years, and I have paid him additional fees ever since Mr. Farabo left Paris. I do not remember when he went to Memphis, but I paid them both; I had them both there. They were of different types; one was a good jury lawyer and the other was a painstaking, accurate preparer of briefs and did that class of work, and I paid one $700 and one $600 a year. Lewis had been carried on the roll for 10 years or more. When Mr. Farabo went to Memphis I did not know what arrangements I would make, so every year after that I would not only pay him $600, which he had been getting, but according to the amount of work he had to do. I think I paid him on an average of about $400 each year, or periodically he would come up and say: "I think that I ought to be paid. I have settled this case, and the work I have done is worth more than my retainer," and I would make him a voucher for $400 at one time, perhaps $450 at another, and he has John Lewis down there as a man who is retained on a pass, and these men who get passes as ordinary retained men, there is not a man in my district, except, perhaps, one man who does not get substantial fees, and in that case we run through a little county, Dover County, and we have an occasional lawsuit and we retain a lawyer, and whenever we have a lawsuit I pay him a fee. I do not think it amounts to much to him, except he gets his transportation. But if there is a lawsuit, he attends to it.

Mr. Folk. There is no controversy over it.

Mr. Keeble. But there is this, that this man has classified these lawyers and slurring them.

Mr. Folk. He has classified lawyers who receive them.

Mr. Keeble. You have named them.

Mr. Folk. The Louisville & Nashville report shows what each got.

Mr. Keeble. And it is inexcusable.

Mr. Carleton. I find the working paper I referred to has been appended in Appendix B of my Louisville & Nashville report. I was under the impression it was, which gives the value of the transportation and the name of the employee and the salary and the amount they received from vouchers and for fees all the way through.

Mr. Folk. Is this the Louisville & Nashville?

Mr. Carleton. Yes. I think the same in the Nashville, Chattanooga & St. Louis.

Mr. Folk. I ask you if you have compiled from the records of the Louisville & Nashville the amounts paid to the various attorneys of that railroad?

Mr. Carleton. Yes, sir; that is all those that I considered——

Mr. Folk. For 1913?

Mr. Carleton. That I considered as not devoting substantially their entire time—that is, those that I would so classify.

Mr. Folk. You compiled the amounts paid to the attorneys whom you did not consider as devoting substantially their entire time to the services of the carriers?

Mr. Carleton. Yes.

Mr. Folk. And that compilation may be found in 373B, page 178, which has already been filed as an exhibit here to your testimony?

Mr. Carleton. Yes.

(Whereupon, at 11 p. m., an adjournment was taken until Saturday, April 29, at 10 a. m.)

LOUISVILLE & NASHVILLE RAILROAD CO.

SATURDAY, APRIL 29, 1916.

NASHVILLE, TENN.

Before Hon. B. H. Meyer, chairman.
Met pursuant to adjournment at 10 a. m.
Present: Parties as before.

HENRY C. KEENE was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. **FOLK**. Your full name?

Mr. **KEENE**. Henry C. Keene.

Mr. **FOLK**. And your occupation?

Mr. **KEENE**. Examiner of the Interstate Commerce Commission.

Mr. **FOLK**. How long have you been an examiner for the Interstate Commerce Commission?

Mr. **KEENE**. Since May 1, 1909.

Mr. **COLSTON**. Mr. Chairman, is Mr. Carleton not to be returned for cross-examination?

Mr. **FOLK**. I thought you had finished your cross-examination?

Mr. **COLSTON**. Oh, no.

Mr. **FOLK**. You want some more?

Mr. **COLSTON**. Oh, yes.

Mr. **FOLK**. I assumed you were through. You cross-examined him last night.

Mr. **COLSTON**. But you had examined him on redirect, and we wanted further cross-examination at this time; and, as I stated yesterday, we want even further cross-examination after we shall have been furnished with copies of the exhibits and afforded a reasonable time to examine them.

Mr. **FOLK**. I merely asked Mr. Carleton with reference to matters brought out on your cross-examination.

Mr. **COLSTON**. That is true; but you asked him what his exhibits related to and opened up a general matter, and we wanted to know what he meant by his answers to you in that regard. He read a letter concerning Mr. Huddleston and Mr. Musick, besides making several other responses, and we would like to examine him on those, and we did not understand that you had announced that you were through.

Mr. **FOLK**. Yes; we announced we were through with him last night. Mr. Carleton may be recalled at any time you wish for cross-examination.

Mr. **COLSTON**. I am in no hurry about it, but I just thought we might at this time finish what we can attend to immediately without making two bites of a cherry in that respect, and then after we shall have had an opportunity to examine the exhibits, after copies have been furnished us, we can go into a more thorough cross-examination.

Mr. FOLK. Suppose we finish with Mr. Keene.

Mr. COLSTON. I have no objection.

Mr. FOLK. As an examiner for the Interstate Commerce Commission, did you go over the books, records, and papers of the Nashville, Chattanooga & St. Louis Railway with reference to the issuance of passes?

Mr. KEENE. I did.

Mr. FOLK. For the year 1913?

Mr. KEENE. Yes, sir.

Mr. FOLK. Also for the years 1914 and 1915?

Mr. KEENE. Yes, sir.

Mr. FOLK. In what condition did you find the pass records of the Nashville, Chattanooga & St. Louis Railway with respect to the years 1914 and 1915?

Mr. KEENE. I found the records of 1914 in fair condition. Those in 1915——

Mr. FOLK. What do you mean by fair condition?

Mr. KEENE. Well, that I was enabled to get the information I desired without very much truoble. They delayed the records, they turned them over some times, but I think all the regulations prescribed by the commission had been obeyed during that year.

Mr. FOLK. How about 1915?

Mr. KEENE. 1915 was in very bad condition with respect to the requirements of the commission.

Mr. FOLK. To what extent were the carrier's records for 1915 at variance with the regulations of the commission?

Mr. KEENE. In many ways.

Mr. FOLK. Well, explain more fully.

Mr. KEENE. The commission's regulations to govern the issuing and recording of passes of steam roads, issued under order effective January 1, 1912, provide in paragraph 7, as follows:

> A record of pass stock received and distributed shall be kept by classes and numbers by the officer ordering the pass stock. On the debit side of such record shall be entered the entire pass stock as received from the printer or stationer. On the credit side shall be entered all pass stock issued to other officers or countersigning subordinates (including stock assigned to the officer ordering the stock for issuance to individual users) and pass stock destroyed.

That regulation was not obeyed. The stock record was not maintained during 1914. When I called for this record I was informed it would have to be made up.

Mr. FOLK. It had not been made up before?

Mr. KEENE. It had not been made up before, and I was subjected to a delay of 24 hours while it was being made up.

Mr. FOLK. Were these records filed in such a way as to be accessible or inaccessible for examination?

Mr. KEENE. The regulations of the commission provide that the issuance of annual passes shall be recorded in book form or on cards. The Nashville, Chattanooga & St. Louis Railway elected to keep its records in book form.

In examining the book record in connection with the unused annual pass stock it was found that a large number of annual passes which had been issued were not accounted for. I have the numbers of these passes. They are: System, 5801 to 5868, inclusive; limited, L–900 to L–981, inclusive; limited, 1008 to 1184, inclusive; and limited, L–1500 to L–2107, which is nearly 1,000 annual passes which the records of this carrier do not clearly indicate whether they were issued or not.

Subsequently, however, Mr. T. A. Clarkson, the secretary of the company, brought to me a file, indicating that 160 of these passes had been issued to newspapers. This fact was not indicated in the book record.

Mr. **Folk.** Did you find any record indicating that conductors on the N., C. & St. L. made a report where no passes were listed?

Mr. **Keene.** Yes; I did. I found in many instances, particularly in 1913, because we examined an entire year of pass reports, that reports would be rendered with "None" written on them, and in that connection I found what I considered were a great many pass reports missing. I took this matter up with the officials of the N., C. & St. L. and I was informed that the operating department of this carrier, while it had issued instructions to its conductors, did not look favorably upon the regulations of the accounting department—that is, that they thought it imposed too much work on their conductors in accounting.

Mr. **Folk.** That is all, Mr. Keene, unless you want to ask some questions.

Cross-examination:

Mr. **Waller.** Yes. I want to ask Mr. Keene a good many questions. Mr. Keene, when did you first come to Nashville to make an investigation of the passes issued by the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene.** If you mean when I first came to Nashville to begin the investigation under Senate resolution 153, that was on February 3, 1914.

Mr. **Waller.** How long were you here in Nashville at that time?

Mr. **Keene.** I remained until September 24, 1913, but subsequently returned a number of times on miscellaneous matters.

Mr. **Waller.** Then, how many men did you have with you during that period making an examination of the accounts, memoranda, etc., of the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene.** When I began the investigation I had 1 with me and at various times I had varying numbers up to 28.

Mr. **Waller.** The information secured by them was compiled by you in a report, was it not?

Mr. **Keene.** It was compiled by me and my assistants.

Mr. **Waller.** And your assistants. That report now is in evidence in this case as an exhibit to Mr. Carleton's deposition, as Reports Nos. 372, 372A, and 372B; is that correct?

Mr. **Keene.** That is correct. Those are the numbers of my reports, and I believe they have been filed in that manner.

Mr. **Waller.** Now, when was this report made?

Mr. **Keene.** That report is dated June 8.

Mr. **Waller.** 1914?

Mr. **Keene.** 1914.

Mr. **Waller.** That has been in the possession of the commission for nearly two years?

Mr. **Keene.** I presume it has, since June 8, 1914.

Mr. **Waller.** What instructions did you have when you came here to make this examination?

Mr. **Keene.** What instructions?

Mr. **Waller.** What instructions; yes?

Mr. **Keene.** I had instructions to make examination of certain records of the Nashville, Chattanooga & St. Louis Railway and of any other companies that were named to me in connection with Senate resolution 153, and any other matters that the commission desired to investigate along with it.

Mr. **Waller.** From whom did you have those instructions?

Mr. **Keene.** I received my instructions from Mr. Will H. Carleton, examiner of the Interstate Commerce Commission.

Mr. **Waller.** Mr. Keene, when you arrived in Nashville did you confer with Senator Lea?

Mr. **Keene.** I believe I saw Senator Lea one or two days after my arrival, probably the second day.

Mr. **Waller.** Where did you see him?

Mr. **Keene.** I saw him at his office.

Mr. **Waller.** Did he telephone to you or did you go there to see him?

Mr. **Keene.** I went to see him.

Mr. **Waller.** How often did you see Senator Lea while you were in Nashville?

Mr. **Keene.** I probably saw him two times or three times; I don't remember exactly which.

Mr. **Waller.** Where did you see him?

Mr. **Keene.** My recollection is that each time I saw him at his office.

Mr. **Waller.** What were the reasons why you went to his office to confer with him about this matter?

Mr. **Keene.** The reasons for my going?

Mr. **Waller.** Yes.

Mr. **Keene.** I went to confer with him with respect to the reason for my coming to Nashville.

Mr. **Waller.** What was the object of that conference?

Mr. **Keene.** The object of the conference was for me to ascertain what he knew in connection with my visit to Nashville.

Mr. **Waller.** What he knew?

Mr. **Keene.** Yes, sir. At that time instructions relative to the examination had not been fully determined, and I went to him to see about one specific thing.

Mr. **Waller.** Well, I understood you had your own instructions before you came here?

Mr. **Keene.** I did, but not with relation to this one specific thing.

Mr. **Waller.** Did you have to go to Senator Lea as a representative of the Interstate Commerce Commission to get instructions as to that one specific thing?

Mr. **Keene.** I did not have to go to get instructions, but I went there to secure the names of some persons who were to give me some information.

Mr. **Waller.** How did you know he had the names of persons?

Mr. **Keene.** The information had been given to me.

Mr. **Waller.** By whom?

Mr. **Keene.** Well, I might say by the commission.

Mr. **Waller.** Well, you might say that——

Mr. **Keene.** I do say that.

Mr. **Waller.** Do you remember which member of the commission gave you the information?

Mr. **Keene.** I do not understand the question.

Mr. **Waller.** Which member of the commission gave you the information?

Mr. **Keene.** Do you mean one of the commissioners?

Mr. **Waller.** Yes.

Mr. **Keene.** No member of the commission.

Mr. **Waller.** Well, you said that you had it from the commission.

Mr. **Keene.** I consider any employee to whom I am subordinate the commission.

Mr. **Waller.** Give us the name of the party who instructed you to go to Senator Lea.

Mr. **Keene.** Well——

Mr. **Folk.** Who is your superior there?

Mr. **Waller.** Just let the witness answer, Governor. He knows who the party was.

Mr. **Keene.** Well, I don't remember whether it was Mr. Carleton or Mr. Wilson.

Mr. **Waller.** Who is Mr. Wilson?

Mr. **Keene.** He was the examiner in charge of the Chicago office.

Mr. **Waller.** How many times did you confer with Senator Lea while you were here? Do you say two or three times?

Mr. **Keene.** That is what I said previously.

Mr. **Waller.** And at his office?

Mr. **Keene.** That is what I said.

Mr. **Waller.** You never conferred with him anywhere else?

Mr. **Keene.** I do not recollect having done it. I might have met him on the street a time or two.

Mr. **Waller.** Did you not go down when he left for Washington and have a talk with him at the Union Station?

Mr. **Keene.** I believe I did. That was on the street, practically.

Mr. **Waller.** You knew he was going to leave when you went there to see him, did you not?

Mr. **Keene.** I do not recollect.

Mr. **Waller.** You were making an ex parte investigation of the Nashville, Chattanooga & St. Louis Railway matters. Your purpose was to give a fair and just record to the Interstate Commerce Commission, was it not?

Mr. **Keene.** My conversations with Senator Lea had nothing to do with the investigation of record.

Mr. **Waller.** Well, I say—just read the question.

(The question was then read as above recorded.)

Mr. **Keene.** Yes.

Mr. **Waller.** Now, Mr. Keene, when you made this report, you selected certain letters and took copies of them from the files of the Nashville, Chattanooga & St. Louis Railway and incorporated them in an appendix or report called 372B, did you not?

Mr. **Keene.** I and my assistants did.

Mr. Waller. For what purpose were these letters selected?

Mr. Keene. For the purpose of indicating the character of letters which the carrier was in the habit of receiving from that class of persons and the character of letters written, if there are any there, in answer to such letters.

Mr. Waller. Did you select these letters yourself?

Mr. Keene. I did not select them.

Mr. Waller. Who did?

Mr. Keene. The examiner who had charge of that portion of the work.

Mr. Waller. You took copies of all of our correspondence, then did you?

Mr. Keene. I did not. I did not say that I did.

Mr. Waller. Were you directed as to what letters you should take copies of?

Mr. Keene. Not specifically.

Mr. Waller. How did he get these copies unless you took them in your investigation here?

Mr. Keene. I instructed him to take them, if you mean by how did he, my assistant; I instructed him.

Mr. Waller. It was your assistant, then, that selected these letters?

Mr. Keene. I believe the record states that, from my previous answers.

Mr. Waller. You are familiar with this report that was made?

Mr. Keene. I was familiar with it at that time. I have not read it since.

Mr. Waller. I will ask you whether there are any facts in this report which you submitted to the commission showing that anyone had been bribed or corrupted by the use of free transportation?

Mr. Keene. I do not believe——

Mr. Waller. Showing or tending to show that anybody——

Mr. Keene. I do not believe that I have reported it that way.

Mr. Waller. I am not asking whether you reported it that way. I am asking you, as you compiled this report, if there are any facts in it which show or tend to show that any public official of the State of Tennessee had been corrupted or bribed by the Nashville, Chattanooga & St. Louis Railway by the use of free transportation?

Mr. Keene. Are you asking my personal opinion?

Mr. Waller. I am asking you if there are any facts in the record showing or tending to show that fact?

Mr. Folk. I object. The report will show for itself whether there are any facts showing, or tending to show, any particular conclusion, and the witness ought not to be called upon to express his opinion as to whether that report shows or tends to show certain things.

Mr. Waller. I am not asking his opinion. I am asking him if there are any facts showing that a person had been bribed or corrupted by the use of free transportation. If there are any facts in the record——

Mr. Folk (interposing). The report would speak for itself on that.

Mr. Waller. But I have not had time—we never saw this. You have had it for two years and we never saw it until yesterday, and we have not had time, we were here until 11 o'clock last night, and, now, here is the man who made it, and I am asking him to tell me what is in it, and especially this character of facts.

Mr. **Folk.** Would you like to have him read it?

Mr. **Waller.** No; it would take too long to do that, Mr. Folk.

Chairman **Meyer.** If the witness has an answer, he may give it.

Mr. **Keene.** I do not know of any facts that I could state that positively proves that anybody did what you ask. I have forgotten the question; but I know what it means.

Mr. **Waller.** So that, so far as you know, there are no facts in this record that show, or tend to show, that any public official or other person had been corrupted or bribed by the use of free transportation?

Mr. **Keene.** No.

Mr. **Waller.** Then, you think the Interstate Commerce Commission was wrong when it stated in its report that persons had been bribed the same as if they had been given money and corrupted by the use of free transportation?

Mr. **Folk.** I must enter my protest against the witness being called upon to pass judgment upon the Interstate Commerce Commission. He is a mere subordinate of the commission, an accountant, and it is hardly fair to ask him whether or not the Interstate Commerce Commission was correct in its report.

Chairman **Meyer.** I think that objection should be sustained. I do not believe we can gain anything by going on with this witness in that way, Judge Waller.

Mr. **Waller.** Of course, I will have to yield to the chairman's ruling.

Chairman **Meyer.** You are really asking him to interpret the report of the commission itself.

Mr. **Waller.** Well, I felt, though, that as these facts upon which the report was based were made by Mr. Keene, and he was the only one that had the information, and he is the one that compiled it, that, perhaps, it was not improper to ask him if there were any facts in there that justified that conclusion, and, then, if there were not, whether or not he thought that was an erroneous conclusion.

Chairman **Meyer.** With respect to the first, you remember I sustained your position. Now, with respect to the second, when you are asking the witness whether he agrees with the Interstate Commerce Commission——

Mr. **Waller.** Well, I will withdraw that question, Mr. Chairman. Mr. Keene, last night there was a letter introduced which I presume was furnished Mr. Carleton by you from Mr. B. G. McKenzie. Have you got that? Did you take a copy of that from the files of the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene.** I did not.

Mr. **Waller.** Do you know who did?

Mr. **Keene.** Yes, sir.

Mr. **Waller.** Who was it?

Mr. **Keene.** Charles E. McCoy.

Mr. **Waller.** He is one of your assistants, working with you?

Mr. **Keene.** He is.

Mr. **Waller.** Now, this letter was from the attorney general of the eighteenth judicial circuit requesting transportation, and it was furnished last night, when Mr. Carleton was on the stand for the purpose of showing that the Nashville, Chattanooga & St. Louis Railway had appointed Mr. McKenzie a local attorney in consideration of a card pass.

Mr. Folk. I beg pardon, Judge Waller. It was not read for the purpose of showing that the Nashville, Chattanooga & St. Louis Railway appointed Mr. McKenzie, but in connection with some other letters it was read to show that attorneys are sometimes appointed simply for the pass.

Mr. Waller. Well, now, I do not see how a letter of that sort would show that they are sometimes appointed unless that was intended to show that.

Mr. Folk. This gentleman asked to be appointed an attorney in exchange for a pass.

Mr. Waller. Now, do you think when a gentleman asks to be appointed that that shows that he is appointed?

Mr. Folk. No, indeed; and he was not appointed in this case.

Mr. Waller. Did not the records show there that that gentleman was not appointed local attorney of the Nashville, Chattanooga & St. Louis Railway?

Mr. Keene. I do not know.

Mr. Waller. You do not know?

Mr. Keene. No.

Mr. Waller. You did not look further?

Mr. Keene. I did not look at all, as I have said before.

Mr. Waller. Well, you know this, that the local attorneys of the Nashville, Chattanooga & St. Louis Railway are given system passes, do you not, good for interstate trips as well as intrastate trips?

Mr. Keene. Generally, I do.

Mr. Waller. You know that those passes marked on that were not that kind of passes, do you not?

Mr. Keene. This record is an "L" pass, which would be limited.

Mr. Waller. Between points in the State of Tennessee?

Mr. Keene. That is true.

Mr. Waller. And those are the passes that were usually given to attorneys general of the State when they requested them?

Mr. Keene. I do not know as to that without consulting the record.

Mr. Waller. Did you not find out when you were making the investigation that it was the custom down there when attorneys general asked for transportation over this road and others, to get it?

Mr. Keene. You speak of investigation. This happens in 1915. What years do you refer to?

Mr. Waller. I will refer then to 1913.

Mr. Keene. I believe it was the custom.

Mr. Waller. Yes; it was the custom.

Mr. Keene. I can not say without referring to the record.

Mr. Waller. Now, you have no accounts to show that Mr. McKenzie was appointed a local attorney for a card pass, have you?

Mr. Keene. No.

Mr. Waller. And if you will examine my files, you will see that he was not appointed. I will beg to let you have them, if necessary, and satisfy you upon that point.

Now, Governor, as I understand, you introduced that to show that they were sometimes appointed for that purpose.

Mr. **Folk**. The letter will speak for itself. It was read last night by Mr. Carleton in connection with some other letters in relation to attorneys serving for passes.

Chairman **Meyer**. Gov. Folk, is not the interpretation of the letter really a matter of argument that we ought not to spend time with this witness about?

Mr. **Folk**. Entirely so.

Mr. **Waller**. Now, I will read this letter, Mr. Keene, to you:

[Citizens Bank. The president, Mr. Graper.]

LEXINGTON, TENN., *February 3, 1915.*

Hon. D. G. HUDSON,
100 Broadway, Nashville, Tenn.

DEAR BORDEY: The "pie brigade" is out in full force and I'm about to commit my first offense.

Mr. Sims has persuaded me to apply for collector of internal revenue, and through his efforts he has secured practically the entire Tennessee delegation for me. I hope to have Shields and Lea also for me. Mountcastle has sent me a strong letter, as has Cates, the judges of the court of civil appeals, and lawyers and others from different parts of the State.

What I want is for you to give me some time in getting indorsements from regulars in the legislature.

A word from you can get me letters from 25 members and I write to ask if you will interest yourself for me? I need, and need badly, just what you and no other can do just now. Have several letters prepared ready for a signature and then get the member for a word and he will sign for you. Just a friend you want him to indorse for a place, etc., that you can so well put if you just will.

Do this for me and command me whenever I can serve. Let me hear from you.

Sincerely,

H. E. GRAPER.

Now, what was the purpose of putting that letter in this compilation?

Mr. **Keene**. Let me see that letter.

Mr. **Folk**. I will state that letter does not belong there, and it was marked out. You will find it there marked "Out," as well as the next one. It has nothing to do with free passes and ought not to have been in that file.

Mr. **Stone**. It is in that exhibit.

Mr. **Folk**. But it was marked out and it is not a part of it.

Mr. **Waller**. When was it marked out?

Mr. **Folk**. Before it was made part of the record.

Mr. **Waller**. I beg pardon, then. We will just mark that out. Take that part out, beginning with that question. I had not noticed that these were marked out. I notice there are several from Mr. Graper marked out. Do you know who Mr. Graper is?

Mr. **Keene**. I have not the honor.

Mr. **Waller**. You do not know, then, that he is an intimate political friend of Senator Lea?

Mr. **Keene**. Not knowing him, I would not know that.

Mr. **Waller**. I do not mean to say that is the reason these letters are marked out.

Mr. **Folk**. I will state that had nothing whatever to do with it.

Mr. **Waller**. I said I did not want that to be inferred from what I said. I do not mean to infer that.

Mr. **Folk.** The letters do not refer to free passes in any way, and the letters introduced are with relation to free passes. If you gentlemen desire to have those letters in, we certainly have no objection in any way.

Mr. **Waller.** I will read this letter, Mr. Keene:

[Tennessee Division of the Farmers' Educational and Cooperative Union of America, Office of E. H. Dowdy, chairman executive committee.]

Big Sandy, Tenn., *March 3, 1913.*

Hon. D. G. Hudson, *Nashville, Tenn.*

Dear Sir and Friend: Your letter of several days ago was on my desk when I returned from Knoxville, where I had been in school. Sorry I couldn't be up when you needed me, but trust our friend Fisher voted all O. K. anyway.

We have got a big fight on in Benton County now trying to float bonds.

When I can serve you, command me.

Yours, truly,

E. H. Dowdy.

For what purpose was that put in this?

Mr. **Keene.** Because it appeared to indicate—in the first place, I want to ask to whom that is addressed?

Mr. **Waller.** That is addressed to Mr. Hudson.

Mr. **Keene.** What else?

Mr. **Waller** (reading):

Nashville, Tenn. Dear sir and friend.

Mr. **Keene.** That is in the files of the Nashville, Chattanooga & St. Louis Railway as a pass request?

Mr. **Waller.** There is nothing about a pass in it.

Mr. **Keene.** Well, I would like to see it.

(Exhibit 1 handed witness.)

Mr. **Keene.** It appeared to indicate that the writer was communicating to an official of the carrier information relative to political activity.

Mr. **Waller.** Well, was it addressed to Mr. Hudson as an official of the railway, or was it not a personal letter?

Mr. **Keene.** I have no idea what kind of a letter it was, but——

Mr. **Waller.** Nothing is said about transportation in it?

Mr. **Keene.** No.

Mr. **Waller.** It is not marked "Out," is it?

Mr. **Keene.** No.

Mr. **Folk.** Do you desire it to be marked "Out"?

Mr. **Waller.** No; I have no objection to enter to any of them, but I wanted to see why some were marked "Out" and others were not.

Mr. **Folk.** It has no reference to transportation.

Mr. **Waller.** I will ask you if there is not another letter similar. Read that [handing book].

Mr. **Keene** (reading):

[Citizens Bank, Lexington, Tenn. The president, Mr. Graper.]

Dear Hudson: Mr. Barry tells me he left the letters, or some at least, with you, and that you will see members and senators and have them signed. I will greatly appreciate it and ask that you do this for me as speedily as possible. I believe in that way we can forestall any other applicant. With what I have now I have a strong case to show the President.

Sincerely,

H. E. Graper.

Mr. **Waller.** Now, is that marked "Out"?

Mr. **Keene.** It is.

Mr. **Waller.** Now read this [handing book].

Mr. **Keene** (reading):

[Citizens Bank, Lexington, Tenn. The president, Mr. Graper.]

Dear Dorse: I know you have been and will continue to be very busy with the legislative matters, but please assist in my matters before the adjournment. I do not know what developments may arise before the reconvening, or what other announcements for collector might be made, and of course I want these indorsements now to forestall as much as possible any other application.

Do this for me the first of the week. I believe Hoyt Stewart and Welch will both give you letters if you will but ask, and Worley may also. Do not delay, please, but serve me this week, before adjournment, and then command me.

Sincerely,

Graper.

February 16, 1913.

I have the strongest bunch from all over the State you ever saw.

Mr. **Waller.** Is that marked "Out"?

Mr. **Keene.** It was not.

Mr. **Waller.** How about that up there [indicating]?

Mr. **Keene.** It was marked "Out." I will correct that.

Mr. **Waller.** I will ask you if every letter in here from Mr. Graper has not been marked "Out"?

Mr. **Keene.** I could not tell until I looked at it. From Mr. Graper, did you say?

Mr. **Waller.** Yes; from Mr. Graper.

Mr. **Keene.** There are three in here marked "Out"; that is all he found.

Mr. **Waller.** Now, do you know whether Senator Lea has seen this?

Mr. **Keene.** I do not.

Mr. **Waller.** Do you know when these were stricken out?

Mr. **Keene.** I do not.

Mr. **Waller.** Did you find any letters from anybody else stricken out, except from Mr. Graper?

Mr. **Keene.** I did not look for any.

Mr. **Waller.** Well, I believe I will ask you to look.

Mr. **Keene.** All right.

Mr. **Waller.** And see if any letters from anybody else were stricken out except those from Mr. Graper.

Mr. **Keene.** Does "X" on a letter mean anything?

Mr. **Folk.** No; it has no particular meaning to it except to call attention to it.

Mr. **Keene.** I understand those stricken out have "Out" written on them.

Mr. **Folk.** Yes.

Mr. **Keene.** The only ones I see in there with "Out" written on them are from Mr. Graper.

Mr. **Waller.** They are the only ones that are marked "Out"?

Mr. **Keene.** The only ones I see that are marked "Out."

Mr. **Waller.** Well, you see them all.

Mr. **Keene.** Well, according to my judgment they are the only ones marked "Out."

Mr. **Waller.** You have just examined the book?

Mr. **Keene.** Yes, sir.

Mr. **Waller.** Can you state positively, after having just examined the book, that no others are marked "Out"?

Mr. **Keene.** No others are marked "Out," unless the sheets may have caught together and I did not see it. That is a possibility.

Mr. **Waller.** Now, Mr. Keene, you have set out in this 372A Report, the names of persons to whom free transportation has been issued in 1913 by the Nashville, Chattanooga & St. Louis Railway.

Mr. **Keene.** Certain classes of persons.

Mr. **Waller.** Did you suggest or have anything to do with the selection of the names of Senators and Representatives who were called here as witnesses?

Mr. **Keene.** I did not.

Mr. **Waller.** Were they selected when you were present?

Mr. **Keene.** I do not think so. If they were, I did not know about it.

Mr. **Waller.** Well, you know what is done when you are present, do you not?

Mr. **Keene.** I might be present in the room and I might not be paying any attention to what was being done.

Mr. **Waller.** Well, you know that a great many were subpœnaed here that were excused, do you not?

Mr. **Keene.** I do not.

Mr. **Waller.** Now, let us take Senator Blakemore. I wish you would look at this and see—I don't know exactly how to find it—how many trip passes Senator Blakemore requested for his friends and constituents?

Mr. **Folk.** It is already in the record. It was read in yesterday by Mr. Carleton.

Mr. **Waller.** I know, but I have forgotten and wanted to get it accurately now.

Mr. **Keene.** According to the record—did you say how many he requested?

Mr. **Waller.** Yes; and received.

Mr. **Keene.** I have no statistics on how many he requested.

Mr. **Waller.** How many he requested and received, then? Put it that way.

Mr. **Keene.** How many he requested and how many they received?

Mr. **Waller.** How many were issued upon the request of Senator Blakemore, Mr. Keene? I think you understand what I mean.

Mr. **Keene.** I do now.

Mr. **Waller.** Well, I think you did before.

Mr. **Keene.** I want to have it clear in the record what I answer.

Mr. **Waller.** Yes.

Mr. **Keene.** According to this record there were 295.

Mr. **Waller.** Two hundred and ninety-five?

Mr. **Keene.** Trip passes.

Mr. **Waller.** Trip passes?

Mr. **Keene.** Yes.

Mr. **Waller.** To Senator Blakemore?

Mr. **Keene.** Yes.

Mr. **Waller.** Now, he was summoned as a witness, was he not?

Mr. **Keene.** I do not know.

Mr. **Waller.** Now, do you think that is any evidence that Senator Blakemore, who is one of the best men in Bedford County, was corrupted by the use of free transportation?

Mr. **Keene.** Do I think the fact that he received these passes?

Mr. **Waller.** Yes.

Mr. **Keene.** I could not say that I do.

Mr. **Waller.** Well, do you think so?

Mr. **Keene.** I am not in possession of enough facts to say I do.

Mr. **Waller.** Now, do you know that since he received those passes he has been appointed by the President of the United States as postmaster at Shelbyville, Tenn.?

Mr. **Keene.** I do not.

Mr. **Waller.** And do you know that he was recommended for that position by Senator Lea?

Mr. **Keene.** I did not know.

Mr. **Lea.** May it please the commission, if the witness is going to testify or Judge Waller is going to testify, it would give me great pleasure to see him on the stand so I may be permitted to cross-examine him on certain matters. Does he know that I recommended Senator Blakemore to the President of the United States?

Mr. **Waller.** I asked the witness a question—if he knew.

Mr. **Lea.** You are assuming a fact. Do you know it to be a fact?

Mr. **Waller.** I did not say anything about it.

Mr. **Lea.** You assumed it to be a fact.

Mr. **Waller.** I asked him if he knew whether or not Senator Lea indorsed Senator Blakemore for the position of postmaster.

Mr. **Lea.** Let us have the first question read. The witness previously said he did not know anything about it, and if he did not know anything about it he certainly could not answer the last question asked.

(The previous questions and answers were then read as above recorded.)

Mr. **Lea.** Judge Waller can not be any more anxious to testify than I am for him to.

Mr. **Waller.** Do you not know anything about how that was, Mr. Keene?

Mr. **Keene.** How what was?

Mr. **Waller.** Whether or not Senator Blakemore was indorsed for the position of postmaster by Senator Lea?

Mr. **Keene.** I have answered that question.

Chairman **Meyer.** Judge Waller, do you not think it would be better to ask Senator Lea those questions when he takes the witness stand?

Mr. **Waller.** Yes, sir; perhaps so.

Now, do you know whether or not Senator Blakemore was excused from being a witness in this case after he appeared here?

Mr. **Keene.** I do not.

Mr. **Waller.** Now, Mr. Keene, in your report to the Interstate Commerce Commission you said this:

> There were issued by the carrier to and at the request of so-called company attorneys, not retained through the payment of regular compensation, not considered as devoting substantially their entire time to its service, etc.

What did you mean by saying "so-called company attorneys"?

Mr. KEENE. I meant employees of the carrier designated as company attorneys, whose employment with the carrier was not substantially their entire—it did not consume substantially all their time.

Mr. WALLER. Why did you use the words "so-called company attorneys"?

Mr. KEENE. Because I was composing the sentence. I might have given it to others.

Mr. WALLER. I asked you why you used that term. That is the reason I thought you would know, because you composed it.

Mr. KEENE. I have answered that question.

Mr. WALLER. Did you not mean to indicate that they were not bona fide company attorneys?

Mr. KEENE. I meant to indicate that they were not substantially devoting their entire time to the service of the Nashville, Chattanooga & St. Louis Railway.

Mr. WALLER. Then I understand you did not mean by using this language to indicate that these were not bona fide attorneys employed and retained to attend to the business of the Nashville, Chattanooga & St. Louis Railway in the counties where they were located?

Mr. KEENE. I meant to say by that, if attorneys not substantially devoting their entire time to the service of the carrier are not bona fide attorneys—if they are not bona fide attorneys, then I meant that, but that is all according to your construction of what is meant by not substantially devoting their entire time to the service of the carrier.

Mr. WALLER. Then what you mean depends on the way I construe it?

Mr. KEENE. Well, the way the commission construed it was the way I intended it to be construed originally, because I rendered the report to the commission, as you know.

Mr. WALLER. Now, did you mean to intimate in that language that these attorneys were employed for political purposes?

Mr. KEENE. I did not.

Mr. WALLER. Is it an unusual thing in your experience as an examiner of the Interstate Commerce Commission to discover that railroads in this country retain their attorneys in the manner in which the Nashville, Chattanooga & St. Louis Railway does?

Mr. KEENE. I do not believe that is a fair question.

Mr. WALLER. Well, I will put it this way: Is the method as you discovered in your investigation, of the employment of attorneys by the Nashville, Chattanooga & St. Louis Railway different from that of a great many other railroads, we will say, in this section of the country?

Mr. KEENE. All the information that I have on that line has been gathered during my service with the commission. I do not believe that I ought to give out any information of that nature that I have gotten in that way, other than to the commission.

Mr. WALLER. Well, is that method of employing attorneys, as you understand it, condemned by the commission?

Mr. KEENE. I do not know.

Mr. WALLER. Then, so far as you know there is nothing improper in retaining an attorney in a county to attend to business as it arises and consider him and put him down upon the company's records as its attorney in that county?

Mr. KEENE. I do not think that I know of anything that is improper about it, but I do not believe that his status is equal to that of one who is on the pay roll, regularly employed, or any other employee.

Mr. WALLER. What do you mean by saying they are not equal to the status?

Mr. KEENE. I mean so far as the issuance of free transportation is concerned.

Mr. WALLER. So you think a person should have a salary, for a railroad company to be authorized to give him transportation?

Mr. KEENE. I do not think anything on the subject. I merely refer to conference ruling 95, which does not allow interstate passes to the families of local attorneys, when it does allow the families of employees regularly employed to receive free transportation.

Mr. WALLER. Now, you investigated, did you not, and did not the company furnish you the information as to the payment of fees to its attorneys, and did not they give you evidence which showed you that they were bona fide attorneys of the company and employed as such?

Mr. KEENE. I did not ask about all attorneys. In fact, I do not remember that I asked about any.

Mr. WALLER. Well, did you go into the records and ask as to fees that were paid them?

Mr. KEENE. I inspected the records, but I did not ask about them, that I remember.

Mr. WALLER. You went through the transportation that was furnished newspapers in the State of Tennessee by the Nashville, Chattanooga & St. Louis Railway, did you not?

Mr. KENNE. I went through the records for it; yes, sir. Do you mean in 1913?

Mr. WALLER. Yes; for 1913. Did you have the correspondence files between the Tennesseean and American and the Nashville, Chattanooga & St. Louis Railway with respect to free transportation?

Mr. KEENE. I did not examine any correspondence files, as I have testified before.

Mr. WALLER. How did you get all these letters?

Mr. KEENE. If the reporter will read the testimony, you will find I said my assistant took those letters out.

Mr. WALLER. What is his name?

Mr. KEENE. Lloyd A. Behler.

Mr. WALLER. And you never saw any of the correspondence files, then, at all?

Mr. KEENE. I never saw any of them until they were written.

Mr. WALLER. Well, do you know whether he examined the files of the Tennesseean and American correspondence?

Mr. KEENE. I do not. I presume he did, as he examined all that you turned over.

Mr. WALLER. I wish you would state to the commissioner—is he here?

Mr. KEENE. He is not here.

Mr. WALLER. I wish you would state now how many trip passes were furnished the Nashville Tennessean and American for the year 1913.

Mr. KEENE. How many; you want?

Mr. **Waller**. How many there were; yes.

Mr. **Keene**. According to this record, they were furnished 156.

Mr. **Waller**. Do you know by whom these passes were countersigned?

Mr. **Keene**. Does it state there?

Mr. **Waller**. I do not believe it does. I do not see.

Mr. **Keene**. Countersigned? That is, by the carrier?

Mr. **Waller**. No; I mean by whom issued, when they were issued.

Mr. **Keene**. You mean at the newspaper office?

Mr. **Waller**. Yes. Does it show?

Mr. **Keene**. I do not believe any of these passes were issued from the newspaper office.

Mr. **Waller**. What?

Mr. **Keene**. I do not believe any of these passes were issued from the newspaper office. They may have been, but I do not think they were.

Mr. **Waller**. Do you mean to say that the Tennessean and American was not furnished a book of trip passes, and that they issued the passes themselves?

Mr. **Keene**. I think you will probably find that under the annual pass; is not that the kind of pass you issue—a card for one representative?

Mr. **Waller**. A card was issued, and it was good when accompanied by a trip pass, the trip pass to be issued and countersigned by some official of the paper.

Mr. **Keene**. I am not positive, but I think we considered those annual passes.

Mr. **Waller**. These are the passes taken from books that were furnished to the Tennessean and American, were they not?

Mr. **Keene**. I believe the passes were furnished to them. I am not confident about the book.

Mr. **Waller**. And they were countersigned and issued by the Tennessean and American?

Mr. **Keene**. I am not positive about that.

Mr. **Waller**. Did you make any investigation of passes issued in 1912?

Mr. **Keene**. I did not.

Mr. **Waller**. Or 1911?

Mr. **Keene**. I did not.

Mr. **Waller**. Just took only one year?

Mr. **Keene**. At the time that you speak of, February 3, 1914, to September 25, 1914, for which that report was rendered, I took one year, 1913.

Mr. **Waller**. Now, Mr. Keene, you have on page 47 of this report, list of annual and term passes issued to company attorneys not considered as devoting their entire time to the service of the carrier. The first one is R. C. Armstrong. What investigation did you make to see to what extent Mr. Armstrong represented the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene**. I did not take any steps to ascertain that.

Mr. **Waller**. Now, Mr. H. H. Barr is put down here as an attorney. Did you take any steps to know what time he devoted to the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene.** I might say that I took no steps to secure any information of that nature with respect to that entire list that you have there.

Mr. **Waller.** Then how could you say that they were not devoting substantially their entire time to the service of the carrier?

Mr. **Keene.** Because they were not rendered regular compensation, and in most cases their fees were not very substantial.

Mr. **Waller.** And you took no steps, you say, to see what time they did give, and yet you say you could tell from their fees how much time they gave?

Mr. **Keene.** I did not say anything about taking steps to find what time they gave. I answered your question, which was not to that effect.

Mr. **Waller.** To Mr. Armstrong was given one pass. These are card passes, or what are they?

Mr. **Keene.** They are card passes.

Mr. **Waller.** Now, did you regard this as transportation that was not justified by the interstate commerce act?

Mr. **Keene.** I did not.

Mr. **Waller.** Why was that put in here, to show the amount of transportation issued by the Nashville, Chattanooga & St. Louis Railway?

Mr. **Keene.** Those were my instructions to do it. The commission wanted the information.

Mr. **Waller.** What instructions now were given you as to these passes as to what should be compiled and what should not be compiled?

Mr. **Keene.** To compile a list of company attorneys not devoting substantially their entire time to the service of the carrier.

Mr. **Waller.** Now, you took all of the attorneys of the Nashville, Chattanooga & St. Louis Railway except those that were salaried, did you not?

Mr. **Keene.** I do not believe that I did that. However, I have a list of them there, and you can refer to it.

Mr. **Waller.** Now, you put Mr. Fitzhugh at Memphis in this, and you put Mr. Lamb at Fayetteville, and the Leechs at Dickson, and Mr. Lytle at Murfreesboro, Mr. Barr at Dresden, Mr. Biggs at Jackson—you have all of them here, as I see, except Brown, Spurlock & Brown, of Chattanooga, and Mr. Slemmons at Nashville. They are on a salary and the rest are not. Did you not take just those that were salaried, and put everybody on this list except those that were on the pay roll of the company on a salary?

Mr. **Keene.** I have a list of those I considered not substantially devoting their entire time to the service of the carrier, in the appendix here.

Mr. **Waller.** Where is it?

Mr. **Keene.** That is in the appendix, alphabetically arranged.

Mr. **Waller.** Here is Mr. Fitzhugh paid fees for services during the year 1913, I take it this is, $3,000.

Mr. **Keene.** Yes; I think it is headed that way.

Mr. **Waller.** What is that?

Mr. **Keene.** It has a caption to that effect, does it not?

Mr. **Waller.** I do not see anything about 1913. It says statement of the amount paid in fees to company's attorneys not retained through the payment of regular compensation, and not considered as devoting substantially their entire time to the service of the carrier, to which were issued term and trip passes.

Mr. **Keene.** Well, that is for the year 1913.

Mr. **Waller.** Now, you put him down, notwithstanding he had pretty substantial fees for one year.

Mr. **Keene.** You mean that one. I think that is the only substantial amount down there.

Mr. **Waller.** Here is one for $1,230.

Mr. **Keene.** Yes.

Mr. **Waller.** Here is one $1,100.

Mr. **Keene.** Yes.

Mr. **Waller.** I do not know exactly what you would regard as substantial, notwithstanding you put down Mr. Fitzhugh as an attorney who would not be entitled to transportation under the interstate-commerce law.

Mr. **Keene.** I did not state that before.

Mr. **Folk.** He did not put it down as not entitled, but as one who does not devote substantially his entire time to the service of the company.

Mr. **Waller.** Then, he is one of these so-called company attorneys. You classed him in the so-called company attorneys?

Mr. **Keene.** Well, if you want to have it that way, I do.

Mr. **Waller.** Now, was it not your purpose to get what was called free transportation, or gratuitous, in this report?

Mr. **Keene.** My purpose was to follow the instructions which had been given me by my superiors. I have stated what they were previously.

Mr. **Waller.** Mr. Keene, in your report you call attention to a case where certain persons you thought were using intrastate transportation for a part of an interstate trip. I will ask you if you did not have interviews with some of the conductors of the Nashville, Chattanooga & St. Louis Railway to see to what extent they were attempting to prevent anything of that sort?

Mr. **Keene.** I had an interview with one conductor with reference to one specific case.

Mr. **Waller.** And did you not ascertain that that conductor had been given instructions and was trying to carry out the law of Congress on the same subject?

Mr. **Keene.** The reason that I asked the conductor the question was because he had written a letter to the superintendent calling attention to the fact that he had been forced to put two people off the train at Cowan.

Mr. **Waller.** Make them pay fare.

Mr. **Keene.** Or make them pay fare; make one of them pay fare.

Mr. **Waller.** And you had no reason to believe that there was any purpose upon the part of the Nashville, Chattanooga & St. Louis Railway to issue intrastate transportation for the purpose of making an interstate trip; is not that true?

Mr. **Keene.** I do not believe that—generally, that was true, but I do believe there were instances when the Nashville, Chattanooga & St. Louis Railway did issue trip passes which they had an idea would be used for interstate journeys.

Mr. **Waller.** Will you mention such instances?

Mr. **Keene.** I have them in that report. If you will hand it to me, I will read them.

Mr. **Waller.** All right [handing book].

Mr. **Keene.** Now, you find in page 15 of Exhibit 6:

> Mr. W. W. Brakefield, at present in the carrier's service as a passenger conductor on its Chattanooga division, stated in conversation that on several occasions Thomas S. Myers had boarded his train, acompanied by his wife, Mrs. Thomas S. Myers, who held passes good for intrastate tranportation in Tennessee; that in each instance Mr. Myers had endeavored to make use of such passes as part of an interstate trip by paying for the remainder of the journey. After several unsuccessful attempts to persuade Conductor Brakefield to thus evade the law, Mr. Myers, accompanied by his wife, on February 22, 1913, boarded train No. 95, in charge of Conductor Brakefield, at Nashville. Mr. Myers had in his possession annual pass No. 1026, good for interstate transportation, and his wife held trip pass P-3895, good for tranportation Nashville to Cowan.
>
> Conductor Brakefield did not inform Mr. Myers that his wife would have to leave the train at Cowan, but it is assumed that owing to the attitude of the conductor on previous occasions Mr. Myers realized that any effort made to use his wife's pass for part of an interstate trip would be futile. Conductor Brakefield stated that he instructed the Pullman conductor in charge of the car in which Mr. and Mrs. Myers were riding to see that they left the train at Cowan. He further stated that if they had not left the train at that point he would either have to put them off at Sherwood, Tenn., or collect full fare for the transportation of Mrs. Myers from Nashville to the interstate point to which she intended traveling. Although Mr. Brakefield did not himself instruct those persons to leave the train at Cowan, his actions in the premises were substantially similar to having done so.
>
> Conductor Brakefield further stated that he requested Mr. Frank Martin, a special agent of the carrier, to ascertain what became of Mr. and Mrs. Myers, and that Mr. Martin informed him that after purchasing a ticket for Mrs. Myers they boarded train No. 5 the same day and proceeded to Chattanooga. This statement implied that an intrastate pass was utilized for the passage of Mrs. Myers in part of an interstate journey.

The reason I say this is that I believe that subsequent to that date on which the conductor had reported to the Nashville, Chattanooga & St. Louis Railway that this attempt had been made to use this intrastate transportation, a successful attempt had been made to use intrastate transportation for a part of an interstate journey, no attempt was made to cease issuing passes to the same parties, because I have numbers of cases subsequent here.

Mr. **Waller.** Still, parties could go to Cowan and stop there, could they not?

Mr. **Keene.** That is very true. I do believe I directly charged the Nashville, Chattanooga & St. Louis Railway——

Mr. **Waller.** No; that is not what I understood you to say, and that is the reason I wanted to ask you about that. It is charged against us, I believe, in the petition.

Now, did you in getting this transportation and looking over this transportation find any facts which led you to believe that the Nashville, Chattanooga & St. Louis Railway are giving intrastate transportation in order to control interstate traffic?

Mr. **Keene.** I could not directly charge them with that.

Mr. **Waller.** Well, did you find any facts that would indicate that anything of that sort had been done?

Mr. **Keene.** Yes; I found some facts.

Mr. **Waller.** What were they?

Mr. **Keene.** The facts were that transportation was issued intrastate to those persons.

Mr. Folk. What persons?

Mr. Keene. To persons of the class indicated by the question, that is, bankers, lawyers, doctors, manufacturers, and farmers.

Mr. Waller. Now, suppose that were true, but what I asked you was this question: Did you find any evidence that indicates there was any purpose to give intrastate transportation with a view of controlling any interstate traffic? Now, I do not mean to say that there were not cases perhaps where somebody who had shipped something now and then in interstate business got a pass, but what I asked was, Was there any evidence, so far as you saw, that indicated that any transportation was given with a view of controlling interstate traffic?

Mr. Keene. I do not believe I could say there was, unless I examined the correspondence files of the carrier with respect to the traffic, not the passes.

Mr. Waller. Well, I mean in the investigation which you made, if you discovered any evidence of that sort?

Mr. Keene. Not in the pass files and passes; I do not believe I did.

Mr. Waller. Well, did you find it anywhere else, Mr. Keene?

Mr. Keene. Why, I thought you were speaking with reference only to the examination of those records.

Mr. Waller. I was speaking with reference to the information you secured while examining here in 1913 if you found any evidence anywhere that would indicate that anybody connected with the Nashville, Chattanooga & St. Louis Railway or its management was giving intrastate transportation for the purpose of controlling interstate traffic?

Mr. Keene. I did not look into that matter other than into the pass files and correspondence attached to passes.

Mr. Waller. You do not understand me. I did not say that you were looking specifically for that, but I asked if you found any evidence anywhere while making this investigation which led you to believe there was any intrastate transportation given for the purpose of controlling interstate traffic?

Mr. Keene. According to my recollection, I did not, but in order to make it clear I want to say that when I examined all records except the pass records and the supporting requests for passes, I was not looking up that feature especially?

Mr. Waller. You did not have that in mind?

Mr. Keene. I did not have that in mind.

Mr. Waller. Now, you make reference in this report to certificates delivered to delegates to farmers' institutes. These certificates were issued by the superintendent of agriculture of the State with the consent of the railroad company, was not that your idea, and is not that correct as to the way that was done?

Mr. Keene. Is not that stated in the report that way?

Mr. Waller. Yes; that is correct.

Mr. Keene. Yes.

Mr. Waller. You did not make any examination of other railroads in the State to see whether they did likewise, and you do not know how that is?

Mr. Keene. I did not.

Mr. Waller. That is all I want to ask.

Mr. **Colston**. I have a question or two. You said that you came here, Mr. Keene, to look into the records of the Nashville, Chattanooga & St. Louis Railway pursuant to the Senate resolution, and possibly with respect to some other things that the commission desired some information with respect to. What were those other things?

Mr. **Keene**. I do not know that that is exactly what I said, sir.

Mr. **Colston**. Well, what did you come here for, then?

Mr. **Keene**. But I think it is substantially true, and the other things were any other things which the commission might direct me to do.

Mr. **Colston**. Well, were you directed to do anything else?

Mr. **Keene**. Well, for one thing I was directed to—I do not believe in the Senate resolution the matter of company attorneys was taken up, and I believe that was added by the commission.

Mr. **Colston**. What member of the commission instructed you to do that?

Mr. **Keene**. When I speak of the commission I speak of no particular member, but of the officer next higher than me, who transmits to me the instructions.

Mr. **Colston**. Was that instruction given to you by an employee of the commission, an examiner, or special examiner?

Mr. **Keene**. What instructions?

Mr. **Colston**. The instructions to investigate matters other than those covered by the Senate resolution.

Mr. **Keene**. The instructions given to me by the examiner in charge of the office in which I was working, or Mr. Carleton, who was directly in charge of this investigation.

Mr. **Colston**. Mr. Carleton gave you those instructions?

Mr. **Keene**. I do not recollect just whether he did or not, because there were a great many instructions relative to matters of that nature.

Mr. **Colston**. Were the instructions to look into matters concerning company attorneys the only instructions you received either from the commission or from employees of the commission with respect to your visit here, outside of the scope of the Senate resolution?

Mr. **Keene**. I do not believe they were.

Mr. **Colston**. What was the particular thing that you were to see Senator Lea about? You said you were to see him about one particular thing.

Mr. **Keene**. About the Nashville, Chattanooga & St. Louis Railway destroying records of vouchers, pay rolls, and journal entries from 1865 to 1905, just at the time when we were to examine those same records.

Mr. **Colston**. What peculiar knowledge did Senator Lea have on that, or for what reason did you see Senator Lea with respect to that particular matter?

Mr. **Keene**. Because I did not know what records they were destroying and he had some information from employees of the Nashville, Chattanooga & St. Louis Railway who did know.

Mr. **Colston**. How did you happen to go to Senator Lea in that regard?

Mr. **Keene**. I have previously answered that question to Judge Waller.

Mr. COLSTON. Were you told by Mr. Carleton to go to Senator Lea—that he had that information?

Mr. KEENE. I was instructed to see Senator Lea.

Mr. COLSTON. Were you told by Mr. Carleton, the inspector or examiner——

Mr. KEENE. I do not recollect who told me, but an employee of the commission did.

Mr. COLSTON. Wait until I finish the question. Were you told by Mr. Carleton or by the examiner in charge at Chicago or by any other employee of the commission that they had information that Senator Lea had been informed by employees of the Nashville, Chattanooga & St. Louis Railway that such action had been taken?

Mr. KEENE. I do recollect that that was told me.

Mr. COLSTON. For what reason did you go to see Senator Lea?

Mr. KEENE. I have answered that question.

Mr. COLSTON. Well, did you receive a letter instructing you to go there?

Mr. KEENE. I do not know whether it was a letter, telegram, or verbal instruction, but I was so instructed. I do not think it makes any difference in which way, just so I say I was instructed.

Mr. COLSTON. How do you know that you were instructed to go to see him so definitely and about that particular matter so definitely, and do not know from what source you received your instruction?

Mr. KEENE. I have the record.

Mr. COLSTON. You have the record?

Mr. KEENE. Yes; but I just have not refreshed my memory. If you would recall me at a later time, I would be able to tell you in what form I got that instruction.

Mr. COLSTON. I will be glad if you will obtain the instructions which related to matters outside of the Senate resolution and which related to your visit to Senator Lea, or refresh your memory in respect thereto, and be prepared to answer that question later.

Mr. KEENE. All right.

Mr. COLSTON. Are you, as an examiner of that class which is provided for by section 20 of the act, an examiner of accounts?

Mr. KEENE. I am.

Mr. COLSTON. You are not one of those examiners that hear testimony—attorney examiners?

Mr. KEENE. I am not.

Mr. COLSTON. When you went to Senator Lea to discuss these matters with him, did you say anything to him with respect to these investigations you were making?

Mr. KEENE. No, sir.

Mr. COLSTON. You did not talk to him about the investigation you were making?

Mr. KEENE. I had not started it.

Mr. COLSTON. At none of the times you saw him?

Mr. KEENE. Well, I had started it, but I was not working actively on it myself; I was attending to the destruction of the records matter; I had another man on the pass matter. I asked him nothing and gave him no information that I recall.

Mr. COLSTON. When you went down to the Union Depot, did you talk to Senator Lea about any of the investigation you were making?

Mr. FOLK. I think they have gone far enough along that line. This is not an investigation of Senator Lea: it is an investigation of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and what the witness said to Senator Lea is of no importance and no consequence.

Mr. COLSTON. I think it is important, Mr. Chairman, and Senator Lea is the complainant in one of the complaints that has been consolidated with this general investigation under the Senate resolution.

Chairman MEYER. But, Mr. Colston, there again, if by and by you call Senator Lea as a witness, do you not think you had better ask him?

Mr. COLSTON. No; there are some things I have in mind I want to get particularly from this witness. I want to find out if it is or is not a fact that he discussed with Senator Lea, after he began this investigation, any of the matters concerning which he was making an investigation.

Mr. KEENE. May I answer it? Although I do not recollect definitely, and it is not—I do not believe that I did discuss anything in connection with the examination of the carrier's accounts.

Mr. COLSTON. Well, the only business you had here or the only capacity in which you represented the commission was as an examiner of the carrier's accounts, was it not?

Mr. KEENE. That is all.

Mr. COLSTON. Your conversations with Senator Lea had to do with those investigations?

Mr. KEENE. Just read my answer a minute ago to that last question.

(The previous answer was then read, as follows:)

> Well, I had started it, but I was not working actively on it myself. I was attending to the destruction of the records matter. I had another man on the pass matter. I asked him nothing and gave him no information that I can recall.

Mr. KEENE. I want to amend that by saying I did not give Senator Lea any information with respect to the examination of carrier's accounts. Does that answer your question?

Mr. COLSTON. It is not an answer to my question. It is volunteering a statement.

Mr. KEENE. If you will pardon me, I would like to have your question read.

(The previous question was read, as follows:)

> When you went down to the Union Depot did you talk to Senator Lea about any of the investigation you were making?

Mr. COLSTON. And you had said you did not give Senator Lea any information, and you asked if that answered my question, and I said it did not. You volunteered the statement that you gave him no information, and I again ask if you discussed with him the matters concerning which you came to Nashville under the instructions of the Interstate Commerce Commission?

Mr. KEENE. I discussed one of those matters; yes.

Mr. COLSTON. And what was that matter?

Mr. KEENE. The destruction of the Nashville, Chattanooga & St. Louis Railway Co.'s records.

Mr. COLSTON. What did you say to him in respect to that destruction?

Mr. FOLK. I do not think it is of importance what he said to Senator Lea. We could continue this forever on this line.

Chairman **Meyer.** What is the purpose of this, Mr. Colston?

Mr. **Colston.** Well, we had made certain allegations in our answer to Senator Lea's complaint that this is entirely relevant to, I think.

Chairman **Meyer.** If you want to know in what manner the Interstate Commerce Commission transmits instructions, and what instructions its employees get, I imagine the members of the commission would be very glad to give you that information.

Mr. **Colston.** That was not what I asked. I asked what he discussed with Senator Lea, and I have been up to that point two or three times and objections have been made by counsel and he has got away from that. He said he gave no information to Senator Lea, but saw him on a number of occasions. I asked now what he discussed and he said he discussed one item relating to the examination of carrier's account, and I want to know what he said to Senator Lea with respect to that item. That is a direct categorical question.

Chairman **Meyer.** If you wish to suggest that possibly the examiner did not do his full duty I think that is a matter that the commission can advise you in regard to.

Mr. **Colston.** I think that probably he did something that was not in his line of duty and——

Mr. **Folk.** I object to those insinuations in this case.

Mr. **Colston.** And what he did outside his line of duty has been injected into the proceeding——

Mr. **Folk.** Mr. Colston is testifying himself. If he wants to testify let him go on the stand and be sworn.

Mr. **Colston.** I am not testifying, but asking him what he said.

Chairman **Meyer.** May I suggest this on behalf of the commission: If, for instance, a shipper on the Nashville, Chattanooga & St. Louis Railway or on the Louisville & Nashville Railroad makes out fraudulent bills, underweighs, and does things of that kind, and it is brought to the attention of the commission, say by Mr. Colston or by the general freight agent of the road or somebody else, and the examiner of the commission is sent there to go over the records, he would be directed to see the man who gave some suggestions or information, if he did give any. And so in this case, while I can not speak definitely, but for your information, there is nothing hidden about this. Mr. Keene was doubtless directed by the commission to see Senator Lea for the same reason he would be directed to see you or some officer of the railroad company, because it was thought because of his interest in this thing he might know something about that destruction of records. I am just saying that, and perhaps that will help clear up what you are after.

Mr. **Colston.** No; I want an answer to the very direct and categorical question I propounded, which was, What did you say to Senator Lea? I have led up to the fact that he did discuss with Senator Lea matters concerning the investigation of accounts with respect to which he was sent to Nashville. Now, I ask, when you did that, what did you say to Senator Lea?

Mr. **Folk.** Do you remember what you said to him? Gratify his curiosity.

Mr. **Colston.** Let the witness answer.

Chairman **Meyer.** The witness may answer, certainly.

Mr. **Keene.** Of course, in two years' time you will appreciate, Mr. Colston, that an examiner who works from Maine to California and from Illinois to Florida is not able to remember the exact words he uses to everybody he does business with and the exact words they use in speaking to him. I will say that in this investigation I interviewed several hundred people, and those that I did not take written transcripts of I have not a very accurate remembrance of; but I will say this to you in this connection, that I asked Senator Lea for the information which he had apparently received from some one with respect to the destruction of records by the Nashville, Chattanooga & St. Louis Railway.

Mr. COLSTON. Well, the act of Congress, or the section of the act to regulate commerce under which you are appointed, is section 20, is it not, which provides that the commission may employ special agents or examiners who shall have authority under the order of the commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. Was that the authority under which you interviewed Senator Lea?

Mr. KEENE. That is.

Mr. COLSTON. And conferred with Senator Lea with respect to these matters?

Mr. KEENE. That is.

Mr. COLSTON. Did he have anything to do with the accounts and records of the carriers? Did you find any accounts and records of the carriers in his office or in his possession or under his control?

Mr. KEENE. No: I did not look for any.

Mr. COLSTON. That will be all, except that I would like to look at those instructions you have, and maybe I will not even want to put you on the stand again in that connection.

Chairman MEYER. In behalf of the commission, I would like to make it clear, if it is not clear now, that it is a very common thing for the commission to instruct its examiners to see various people who may be in possession of various information which may enable the commission better to carry out the provisions of the act to regulate commerce.

Redirect examination:

Mr. FOLK. In distinguishing between attorneys who devote all of their time to the service of the carrier and those attorneys who do not devote substantially all of their time to the service of the carrier, did you have in mind the ruling of the Interstate Commerce Commission making a distinction of that nature?

Mr. KEENE. I do not recall that this was exactly the one, but I quoted 95A a while ago, and this ruling refers to that one.

Mr. FOLK. Read that one.

Mr. KEENE. This is 412:

> Passes to an attorney engaged in the work of a carrier: A carrier arranged with the lawyer to give preferred attention to its railroad business at a monthly salary, the attorney being permitted also to engage in general practice. Upon inquiry, held at the time, passes may not lawfully be issued in such a case unless substantially all the attorney's time is devoted to the work of the carrier.

Mr. COLSTON. What is the number of that ruling?

Mr. KEENE. 412. 426:

> Term passes to local attorneys, surgeons, and so forth: The commission adheres to the ruling, many times repeated, that it is unlawful for an interstate

carrier to issue term passes to local attorneys, surgeons, and others who do not devote substantially all their time to the work or business of the carrier. The principle of conference ruling 208A is reaffirmed.

Mr. Folk. That is all.

Recross-examination:

Mr. Colston. You do not mean to say that those rulings you have just read are orders of the commission, do you?

Mr. Keene. I will have to look and see.

Mr. Folk. They are merely conference rulings.

Mr. Colston. Let the witness answer.

Mr. Folk. They speak for themselves.

Mr. Keene. It says, "Issued by order of the commission," and has the personnel of the commission on the first page. I do not know otherwise than that.

Mr. Colston. They are not classified as orders of the commission; nobody was present before the commission to order those cases or made subject to any ruling that they might issue?

Mr. Keene. I think that the commissioner could probably advise you on that more fully than I can. He is more familiar with it.

Mr. Colston. But it does not appear from the record you have that there was any complaint before the commission or an investigation by the commission with respect to which that order was made, does it?

Mr. Keene. With respect to that order, I have no knowledge as to whether there was or was not.

Mr. Colston. I did not ask for your knowledge, but if the paper from which you read that or in the official publication or the source from which you read that conference ruling showed there was any investigation by the commission or any complaint before the commission upon which that ruling was issued?

Chairman Meyer. The witness can not know anything about it. I shall be very glad to tell you, as a member of the commission——

Mr. Colston. I am after the paper——

Chairman Meyer. The witness does not know anything about it. The witness can not know anything about it.

Mr. Colston. I did not ask the witness's knowledge of the ruling. I asked him if the paper from which he read this ruling indicated that there was any hearing or complaint before the commission, either upon a formal complaint or upon investigation by the commission on its own motion. Now, he can state that, because the paper will show.

Chairman Meyer. If he knows anything about it, let him say.

Mr. Colston. I am not asking what the practice is, but what the paper from which he has read shows. He has testified as to a ruling of the commission, and he has read it from a report or a compilation of conference rulings. Now I ask him if that—I agree with you that the witness does not know anything about it, but counsel for the Interstate Commerce Commission has endeavored to have him testify about something he does not know anything about. Now, I ask him if the thing from which his reading, concerning which he certainly has the evidence of his own eyesight—I ask if that thing, that book or compilation, or whatever it may be, shows that there was any investigation by the commission, either upon a complaint or of its own motion, which would support the ruling?

Chairman MEYER. He has had plenty of time now to look.

Mr. KEENE. As I read to you the entire subject matter of the ruling in question, I do not think that there is any information indicating whether there was a hearing or not, and I think you can draw your own inference from the language that I read you, or can satisfy yourself by referring to it.

Mr. COLSTON. There is nothing there to show there was an investigation or hearing of any kind, is there?

Mr. KEENE. I did not see anything there.

(Witness excused.)

Mr. FOLK. Mr. Johnson.

EDWIN F. JOHNSON was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Your full name?

Mr. JOHNSON. Edwin F. Johnson.

Mr. FOLK. Where do you live?

Mr. JOHNSON. Atlanta.

Mr. FOLK. Georgia?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. What is your occupation?

Mr. JOHNSON. General advertising agent.

Mr. FOLK. How long have you been engaged in that business?

Mr. JOHNSON. Eleven years, 10 or 11; I do not remember exactly.

Mr. FOLK. Did you have any advertising contract in the campaign in Alabama, in which former Gov. Comer was a candidate?

Mr. JOHNSON. I conducted an advertising——

Mr. JOUETT. Before going on with this witness I desire to renew the objection that I made at the outset as to the competency and relevancy of any evidence bearing under section 12. Your honor will remember we moved to strike out the first 12 paragraphs of this investigation and the order of inquiry. Now, this relates to the twelfth paragraph, which covers the subject of political agent, contributions to political campaigns, and advertising. Now, we desire to object to any testimony with reference to the advertising.

Chairman MEYER. It is understood, Mr. Jouett, that you are reserving your rights and your objections.

Mr. JOUETT. I just want to object to that question. We will not go any further at this time. Our idea is, of course, that the commission has no jurisdiction whatever over this question.

Chairman MEYER. I think the record very clearly defines your position.

Mr. FOLK. Proceed.

Mr. JOHNSON. Yes, sir.

Mr. FOLK. I will ask you did you have a contract with the Louisville & Nashville Railroad Co. to do advertising on behalf of that railroad in that campaign?

Mr. JOHNSON. I had no contract.

Mr. FOLK. Did you do any advertising for the Louisville & Nashville Railroad in that campaign?

Mr. JOHNSON. I did advertising in the State of Alabama, beginning late in 1912 or early in 1913, in the interest of the Louisville

& Nashville Railroad in the State of Alabama, without reference to any political campaign.

Mr. Folk. But it embraced the campaign in which Gov. Comer was a candidate?

Mr. Johnson. Gov. Comer was a candidate for governor of Alabama a very short time during the extent of the campaign.

Mr. Folk. And this advertising related to issues advocated by Gov. Comer?

Mr. Johnson. No, sir; it had no reference to issues advocated by Gov. Comer.

Mr. Folk. I show you here a letter signed by Johnson-Dallis Advertising Agency, addressed to Hon. George W. Jones, district attorney of the Louisville & Nashville Railroad Co., Montgomery, Ala., and will ask you if you wrote that or recognize that as a copy of the original?

Mr. Johnson. Yes, sir.

Mr. Jouett. Let me see it, please.

Mr. Johnson. There is no reference in that——

Mr. Jouett. Wait a moment.

Mr. Folk. How much were you paid by the Louisville & Nashville Railroad for advertising during this period you have mentioned?

Mr. Jouett. Wait a moment, will you, please, Governor?

Mr. Johnson. Will you read the question?

(The question was then read as above recorded.)

Mr. Johnson. It may be necessary for me to differentiate as to meaning. You mean the amount of compensation I received or the amount of money that was spent through my office for advertising purposes?

Mr. Folk. Answer the latter part first, how much was expended through your office on behalf of the Louisville & Nashville Railroad for advertising purposes during that period.

Mr. Johnson. It would be necessary for me to refer to my books to ascertain the exact amount. I was summoned here and I had an idea it related to that matter, and I had the bookkeeper to take a transcript hurriedly from the ledger sheet, but I am inclined to believe it is not accurate. The figures submitted by the bookkeeper amount to $25,586.89. I think, however, the exact amount was between $30,000 and $40,000.

Mr. Folk. I have a letter dated August 2, 1913; will you read it, Mr. Doherty?

Mr. Doherty (reading):

Montgomery, Ala., *August 2, 1912.*

Hon. George W. Jones,
District Attorney, L. & N. R. R. Co., Montgomery, Ala.

Dear Sir: Referring to conference to-day and to previous correspondence, the undersigned, Johnson-Dallas Advertising Agency, makes the following proposition to conduct an advertising and publicity campaign in the State of Alabama for and in behalf of the Louisville & Nashville Railroad Co., the said campaign to be under the supervision of the said railroad company.

The advertising agency will prepare such matter as, in the opinion of its experts, should be published in the daily and weekly press from time to time, and submit the same to be edited and criticized by yourself, or such persons as you may designate.

It is also understood that you may send to the agency from time to time such matter as may be prepared by you, or by any of the officials or attorneys of your company, or by any other person, and that the agency will arrange to publish such matter so forwarded by you or such matter as may be prepared by the agency and submitted to you for editing and criticism, in such papers as you may designate.

The agency will arrange for this matter to appear in the form of what is known as straight display advertisements or as plain reading notices, as may be mutually agreed upon.

The services of the agency will be without expense to the railroad company, it being understood that the agency will receive a commission of 15 per cent on all advertising matter supplied by it or through it in the interests of the railroad company, the said commission to be part of the rate charged by newspapers for inserting the advertising matter.

The expense of making plate matter or mounted stereotypes to be supplied to the newspapers is to be borne by the railroad company and will be charged for by the agency at the exact cost of making and shipping.

Express charges on such plate matter is also to be borne by the railroad company.

It might be deemed necessary that a representative of the agency make personal calls from time to time upon the publishers of certain newspapers, and, when so requested by you or your representative, such traveling will be cheerfully done, actual traveling expenses and hotel bills to be paid by the railroad company. Itemized statement of all traveling expenses will be submitted by the representative of the agency engaged in this class of work.

The advertising agency guarantees that the rate at which advertisements will be charged to the railroad company will in all instances be as low, and in many instances much lower, than the rates charged by the newspapers direct to the company.

The agency is thoroughly equipped to check up every newspaper published in the State of Alabama, and note its attitude toward the railroad company, and by reason of that fact, it can and will exert upon editors with whom it advertises influence to treat the railroad company fairly.

Monthly bills, thoroughly itemized, with marked copies of papers and clippings, will be submitted. The privilege is accorded to the railroad company to investigate our record of transactions, financial and otherwise, as they may relate to the railroad company's advertising account, at any time the railroad company may desire.

The agency will submit to you a list of all papers in which such advertising is conducted, together with the inch rate in each paper, said information to be held by you for comparison with the rates specified on subsequent monthly bills.

This contract may be terminated at any time by either party.

Yours, truly,

JOHNSON-DALLIS ADVERTISING AGENCY.
By EDWIN F. JOHNSON.

From executive department file No. 82663, vol. 1.

Mr. FOLK. You received articles, then, from the Louisville & Nashville Railroad Co. and had these articles published in the different papers of Alabama?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. As plain reading matter?

Mr. JOHNSON. No, sir.

Mr. FOLK. In many instances?

Mr. JOHNSON. No, sir. After the preparation of the basis of agreement it was decided that we would confine ourselves to display advertising, with the signature of the Louisville & Nashville Railroad Co., in the early part of the campaign.

Mr. JOUETT. What do you mean by campaign?

Mr. JOHNSON. Advertising campaign, as they are generally termed by all advertising agencies and newspaper people. In the early part of the advertising campaign I was sent some articles prepared by—I do not remember the names of the gentlemen who prepared them—and I had them made into plates and expressed them through my organization to the newspapers for publication at the rates agreed upon as between me and the newspapers.

Mr. **Folk**. Were not some of these articles signed by fictitious names?

Mr. **Johnson**. No, sir.

Mr. **Folk**. Nom de plume?

Mr. **Johnson**. No, sir.

Mr. **Folk**. "Irulus"?

Mr. **Johnson**. No, sir; I never placed any such.

Mr. **Folk**. Do you not know that was a name suggested by President Smith of the Louisville & Nashville Railroad?

Mr. **Johnson**. Never heard of it.

Mr. **Folk**. Do you know George W. Jones?

Mr. **Johnson**. I do.

Mr. **Folk**. Is he here?

Mr. **Johnson**. He is.

Mr. **Folk**. I show you a letter purporting to be signed by yourself, dated August 26, 1912, addressed to George W. Jones, district attorney, L. & N. Railroad Co., Montgomery, Ala., and will ask you to state whether or not you can identify that as a copy of an original letter written by you?

Mr. **Johnson**. Do you wish me to read this aloud?

Mr. **Jouett**. No; not until we see it.

Mr. **Folk**. I just want you to identify it; that is all.

Mr. **Johnson**. Yes, sir; I wrote that letter.

Mr. **Folk**. Will you read this, Mr. Doherty?

Mr. **Doherty** (reading):

JOHNSON-DALLIS ADVERTISING AGENCY,
Atlanta, Ga., August 26, 1912.

Hon. GEO. W. JONES, *District Attorney,*
Louisville & Nashville Railroad Co., Montgomery, Ala.

DEAR SIR: I have just read the inclosed, which seems to have been published in the Alabama papers last Sunday. I presume Mr. Bowie will make a reply and that you will want me to send out the reply.

In this connection, can you give me any information as to who is behind Mr. Nesbitt and who is paying for the advertising that is being done on that side of the question? How determined is that influence, and how long will they last in an argument of this kind?

Mr. Nesbitt has a decided advantage over Mr. Bowie. He is acting as attorney for "the people" against what he concedes to be "the magnificent plant and splendid business this great railroad has established," but which he nevertheless is attacking. Also, he is on the aggressive, and consequently forces Mr. Bowie on the defensive.

It occurs to me that we might inaugurate an aggressive advertising campaign pitched along the lines of the two advertisements, "What the tariff will bear" and "Our interests are identical." We could use that tact and keep reminding the people what the L. & N. is doing for the development of the country, and thus not only be on the aggressive side of the "argument," but take ourselves out of the position of defending the L. & N. as against the people. We have got to convince the people that our interests are identical, and that the L. & N. would never do anything detrimental to the interests of the people, for such a detrimental thing would be detrimental to the interests of the L. & N.

Also, every time Mr. Bowie writes something it gives the opposition ground for keeping up the agitation; that is, unless Mr. Bowie wrote something along the lines suggested. In this connection I would like to see an article written by a man of his ability on the subject of "Railroads, the civilizers." Next to the rifle and the battleship the railroad is the greatest known civilizer. No country has prospered without a railroad, and every country with adequate railroad facilities has prospered.

Please do not understand me to say that Mr. Bowie is not doing good and effective work. But while it is good and effective, it opens up an avenue for continued agitation and dissension. Whether this continued agitation and dissension can best be handled as we are now handling it is the question to be answered, and you and Mr. Bowie are better qualified to make answer than I can possibly be.

I take a matter of this kind as if I was on the side lines; I try to look at it from the point of view of the fellow who is fighting you. Also, the human element enters largely into it. As long as a man keeps hitting me I am going to keep hitting back, provided my strength lasts long enough. In the scrimmage both on us are liable to considerable damage, whereas if we had stopped and talked it over in a friendly way we might have settled our difficulties.

In answer to this it might be said this matter has been talked over in a friendly way. My reply would be that you have talked it over in a friendly way with the selfish politicians, but up to this time you have not taken a direct appeal to the people. The politicians don't want it settled; they would be without issues, and without a leg to stand on. They (the politicians) want a political football, and as long as the L. & N. will continue to act the part they will continue to play.

As above stated, you and Mr. Bowie are far better judges of this than I can possibly be; as a matter of fact, my suggestion may seem small and inconsequential, but I am deeply interested and anxious to render effective service, so I offer whatever seems to me to be worth while. I would not have you think I am critical, but in the first letter I wrote outlining this campaign I said "you can not create a spirit of good will by acting in a manner to create ill will, or by an exhibition of ill will.

Yours, very truly,

EDWIN F. JOHNSON.

From executive department's correspondence file No. 82663, volume 1; Examiner Harvey's papers, Exhibit 12A; schedule 5, sheets 15 and 16.

Mr. FOLK. Who is Mr. Bowie?

Mr. JOHNSON. An attorney in Birmingham, Ala. And by way of explanation, I may state, strange as it may seem to some minds, I am absolutely convinced of the truth of that letter.

Mr. FOLK. Who is Mr. Bowie?

Mr. JOHNSON. An attorney in Alabama, a gentleman whom I met once previous to coming to Nashville.

Mr. FOLK. Employed by the Louisville & Nashville Railroad in the rate cases there?

Mr. JOHNSON. I have no idea.

Mr. FOLK. Did he write articles favorable to the railroad?

Mr. JOHNSON. I have seen some publications from Mr. Bowie's pen signed over his signature.

Mr. FOLK. What were they about?

Mr. JOHNSON. To be perfectly frank, I did not make a critical examination of those articles. I read them before I had any connection with the company's business. I think they were about some commodity rates, however.

Mr. FOLK. They were about the campaign going on in Alabama, were they not?

Mr. JOHNSON. No campaign was going on in Alabama at that time.

Mr. FOLK. Do you know that when the campaign was going on Mr. Bowie wrote letters and articles for the papers?

Mr. JOHNSON. Not that I had any connection with.

Mr. FOLK. Did you have any connection with these articles that you referred to a while ago, written by Mr. Bowie?

Mr. JOHNSON. I stated early in the campaign, the advertising campaign I speak of, I sent out, I think, three or four articles prepared by Mr. Bowie, over his own signature.

Mr. FOLK. What were these articles about, against regulation by Government of railroads?

Mr. JOHNSON. No; I do not think so. I think the articles could be secured, and would be the best evidence. I have thousands of advertisements going through my office, and frequently I do not read a lot of them.

Mr. FOLK. Do you not know what this campaign in which you received, as you said, $25,000 from the Louisville & Nashville Railroad was about?

Mr. JOHNSON. Oh, yes; my end of it, I know. I wrote the majority of the advertisements.

Mr. FOLK. What was it about? What agitation was going on in Alabama to cause this campaign?

Mr. JOHNSON. No agitation at that time.

Mr. FOLK. Did you start this, or did somebody else start this?

Mr. JOHNSON. The business manager of a newspaper in Montgomery wrote me a letter.

Mr. FOLK. Do you mean to say this was all got up by a lot of advertising men and there was no issue on in Alabama at all?

Mr. JOHNSON. At that time there was not, to my knowledge.

Mr. FOLK. And the advertising men merely made the Louisville & Nashville Railroad Co. believe that it might be injured in some way and scared the Louisville & Nashville into buying $25,000 worth of advertising to defend itself?

Mr. JOHNSON. That may be your conclusion, but it is not mine.

Mr. FOLK. Tell us about it.

Mr. JOHNSON. The Louisville & Nashville Railroad Co. had been maligned in the State of Alabama.

Mr. FOLK. By whom?

Mr. JOHNSON. A number—as I said in there—politicians.

Mr. FOLK. Gov. Comer?

Mr. JOHNSON. Well, I have never mentioned Gov. Comer in connection with the work I have done.

Mr. FOLK. I am asking you, was it maligned by him?

Mr. JOHNSON. I think so; yes. I think Gov. Comer is the most burdensome liability the State of Alabama has. That is my personal opinion of Gov. Comer.

Mr. FOLK. He maligned the Louisville & Nashville Railroad?

Mr. JOHNSON. Yes.

Mr. FOLK. Very vigorously?

Mr. JOHNSON. Very.

Mr. FOLK. And he did not have the friendship of the Louisville & Nashville, did he?

Mr. JOHNSON. Well, the Louisville & Nashville Railroad can speak for that itself.

Mr. FOLK. You were rather acting for the Louisville & Nashville Railroad down there with respect to its advertising?

Mr. JOHNSON. In an incidental capacity I was acting for the Louisville & Nashville Railroad. I have 114 advertising accounts on my books.

Mr. FOLK. This was a pretty good account, was it not?

Mr. JOHNSON. Yes.

Mr. FOLK. $25,000 for advertising in that period?

Mr. JOHNSON. Some four years. It ended January 1 this year.

Mr. FOLK. Did you get up any big circulars and put them on billboards?

Mr. JOHNSON. No.

Mr. FOLK. All this was done through newspapers?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. And did you secure editorials in these papers?

Mr. JOHNSON. No, sir; none; nor attempted to.

Mr. FOLK. You stated in your letter here that has been read that you could influence editorial opinion through these advertisements.

Mr. JOHNSON. No, sir; I did not state that.

Mr. FOLK. Put your interpretation on it. What did you state?

Mr. JOHNSON. My interpretation of this proposition is this——

Mr. FOLK. I mean what I have just referred to.

Mr. JOHNSON. That I would attempt to secure fair treatment. I think even a railroad is entitled to that, and that is what I said in my letter, and that is all I ever attempted to secure.

Mr. FOLK. What do you call fair treatment of a railroad?

Mr. JOHNSON. Just treatment.

Mr. FOLK. Just treatment?

Mr. JOHNSON. It may be——

Mr. FOLK. Suppose there were a law pending providing for liability of a railroad for the negligence of fellow servants; would you consider that a fair law?

Mr. JOHNSON. Well, I have not studied law, and I am not prepared to give an opinion.

Mr. FOLK. That is merely a public question.

Mr. JOHNSON. Yes; I understand.

Mr. FOLK. Would you consider the full-crew law a fair law?

Mr. JOHNSON. I would consider the permission or ability of any individual, firm, or corporation to state its position on any subject a privilege which should be accorded any and every one.

Mr. FOLK. Now, what was the issue pending in Alabama to cause the Louisville & Nashville Railroad to pay you $25,000 for an advertising campaign?

Mr. JOHNSON. There was no issue at the time I became associated with the advertising. There was a culmination of sentiment against the Louisville & Nashville Railroad Co., founded largely, in my honest opinion, on erroneous and misleading statements. You must bear in mind that Alabama is the fifth most illiterate State in the United States. The illiteracy of some of those people had been taken advantage of——

Mr. FOLK. By whom?

Mr. JOHNSON. By people who sought political preferment, chief of whom was Gov. Comer.

Mr. FOLK. He was the chief offender of them all, was he?

Mr. JOHNSON. Against good morals, in my opinion.

Mr. FOLK. And good railroads?

Mr. JOHNSON. I do not know—I do; I think he treated the railroads unfairly.

Mr. FOLK. How?

Mr. JOHNSON. By attacks he had made on them.

Mr. FOLK. Trying to regulate them?

Mr. JOHNSON. No; I think he was trying—I think that he was—you understand, my advertising had no reference to Gov. Comer.

Mr. FOLK. Of course not; but what was he trying to do, about this time?

Mr. JOHNSON. Be elected governor.

Mr. FOLK. Was he?

Mr. JOHNSON. About a year after I started or a year and a half after I started.

Mr. FOLK. And he was the chief offender?

Mr. JOHNSON. I would not term him—I think he was a greater offender against the State of Alabama than he was against any railroad.

Mr. FOLK. Can you indicate in what respect Gov. Comer was unfair to the railroads? We do not know; we are merely asking for information.

Mr. JOHNSON. I think any individual who attributes selfish, ulterior motives to any organization and never attributes good or constructive motives to an organization is unfair.

Mr. FOLK. Did he claim the Louisville & Nashville Railroad was selfish?

Mr. JOHNSON. Well, he claimed so much against the Louisville & Nashville Railroad it was almost impossible to—those matters become matters of public knowledge, and I think perhaps you will be more thoroughly advised and ever member of the Interstate Commerce Commission, as to what Gov. Comer thought of the Louisville & Nashville Railroad, than I can.

Mr. FOLK. I ask it to have it as a matter of record and that we may be fully advised in what respect Gov. Comer was unfair to the Louisville & Nashville Railroad, or proposed to be unfair. What particular measures did he advocate?

Mr. JOHNSON. I do not know.

Mr. FOLK. You do not know what measures he advocated, and yet you say he was the chief offender of them all against railroads and the greatest enemy of the State of Alabama in the State?

Mr. JOHNSON. I think so; yes. If you care to have me do it, I can recite one personal incident——

Chairman MEYER. Let me ask, Gov. Folk—you do not want to go beyond the purposes for which this money was expended, do you?

Mr. FOLK. No.

Mr. JOHNSON. This money had no reference, directly or indirectly, to any campaign being conducted by Gov. Comer or subsequently conducted or since conducted by Gov. Comer.

Mr. FOLK. We will see about that in a moment.

Chairman MEYER. We will take a recess now until 2 o'clock.

Mr. KEEBLE. Before you adjourn, we would like to have this agreement with the governor. We wanted to ask Mr. James H. Allison, the general manager of the Tennessean, a few questions, and it will be necessary for him in answering those, perhaps, to have the files of his paper; and, rather than to have to take those files and Mr. Allison to Washington, we would be glad, when you have concluded Mr. Carleton's examination and this gentleman's testimony is concluded, and we have gotten over this matter, if you would be willing to take that up now rather than have to take it up in Washington or some other place.

Mr. FOLK. I would prefer to finish the evidence that I have and then let you present any evidence that you have.

Mr. **Keeble**. I am sure that would be the proper thing, and I would not ask it and am not going to insist on it, but I am sure you are not going to be able to get through to-day with all the evidence you want to introduce, and it would come in very easily and very quickly after you have finished the examiners and Mr. Johnson.

Mr. **Folk**. We have a number of witnesses from out of town. I have taken up Mr. Johnson because he fears he may miss a grand opera in Atlanta and wants to get away.

Mr. **Johnson**. I have already missed it. I am willing to stick it out now.

Mr. **Keeble**. And you will probably take an hour or more before you get through, and are not going to have a great deal of time. Of course, if you want to take this up down there, that would be all right.

Mr. **Folk**. I will talk with the commissioner about it.

Chairman **Meyer**. We will take a recess now, and you may talk over this matter during the intermission.

(Whereupon at 12.40 p. m. a recess was taken to 2 p. m.)

AFTER RECESS.

Edwin F. Johnson resumed the stand and testified as follows:

Direct examination (continued):

Mr. **Folk**. How much was it you expended in Alabama during this period of 1912 that you mentioned this morning in advertising in behalf of the Louisville & Nashville Railroad?

Mr. **Johnson**. It would be impossible for me to give the figures for the year 1912 without reference to my books. The figures from the year 1912 to January of this year, January 5, I think, would approximate between $30,000 and $40,000.

Mr. **Folk**. How much do you estimate you spent for the Louisville & Nashville Railroad for advertising in Alabama during 1912?

Mr. **Johnson**. As I say, Governor, it would be impossible for me to estimate from memory.

Mr. **Folk**. About $25,000, I understood you this morning; is that approximately correct?

Mr. **Johnson**. No, sir; not in the year 1912.

Mr. **Folk**. About how much?

Mr. **Johnson**. I have not the slightest idea. It may have been at the rate of $750 to $1,000 a month, on an average; that is, for the last few months of the year 1912, if the advertising did start in 1912.

Mr. **Folk**. You first wrote to Mr. Jones, the district attorney of the Louisville & Nashville Railroad, August 26, 1912, proposing to do this advertising for the Louisville & Nashville Railroad?

Mr. **Johnson**. I think that is correct. The letter shows.

Mr. **Folk**. And later the arrangement was made with your firm for the advertising?

Mr. **Johnson**. Yes, sir.

Mr. **Folk**. That publicity campaign was with reference to rate regulation, was it not?

Mr. **Johnson**. Some reference may have been made to the question of rates. Practically every subject—at least, I endeavored to touch on every subject relating to the operation of a railroad in contact with the people.

Mr. FOLK. The particular issue before the people at that time with respect to railroads was a proposition to decrease freight rates, was it not?

Mr. JOHNSON. I am not informed as to that, Governor. I never discussed with any official of the Louisville & Nashville Railroad Co. the probable effect or the proposed effect of the advertising conducted under my supervision upon the politics of the State.

Mr. FOLK. You would not get that information from the Louisville & Nashville Railroad Co., but you would get it as a citizen of Alabama, especially as you were expending money in the publicity campaign for the Louisville & Nashville Railroad Co.; you should have known that fact, Mr. Johnson.

Mr. JOHNSON. I did know that fact.

Mr. FOLK. You say now that you did know to be a fact that the issue before the people or an issue before the people of the State of Alabama at that time was the decrease of railroad freight rates?

Mr. JOHNSON. In a general sort of way I knew that, just as I knew that at one time a full-crew bill was attempted in the State of Missouri.

Mr. FOLK. Who was the leader of that fight for decreased freight rates?

Mr. JOHNSON. In Alabama?

Mr. FOLK. Yes.

Mr. JOHNSON. I do not know. I think perhaps Mr. Comer was very intimately connected with it.

Mr. FOLK. Now, did you not say this morning that your publicity campaign that you conducted in behalf of the Louisville & Nashville Railroad Co. had nothing to do with ex-Gov. Comer, directly or indirectly?

Mr. JOHNSON. I did.

Mr. FOLK. You now say it had no relation to any measure or any matters advocated by him in any way?

Mr. JOHNSON. Governor, I said the articles that I prepared myself and presented to the papers none of them ever made mention of Gov. Comer, to the best of my knowledge and belief.

Mr. FOLK. How about articles that were sent to you by the Louisville & Nashville Railroad Co. and published through your agency?

Mr. JOHNSON. They may or may not have. A great many of those articles I personally never saw.

Mr. FOLK. Do you not recall that most of them did deal with Gov. Comer and things Gov. Comer was advocating?

Mr. JOHNSON. I recall that some of them did.

Mr. FOLK. I show you here a lot of advertisements signed by Milton H. Smith. "Answers B. B. Comer." One is headed "Conflicting statements and the facts," and another is headed "Milton H. Smith answers B. B. Comer." The next is, "The people will be advised. Milton H. Smith answers B. B. Comer." The next one is, "Is such a one fit to lead? Milton H. Smith answers B. B. Comer."

I ask if these advertisements were not inserted through your agency?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. What did you mean when you said this morning that this money was not used directly or indirectly in connection with ex-Gov. Comer?

Mr. JOHNSON. I did not say that.

Mr. FOLK. Just say what you recall you did say.

Mr. JOHNSON. I said this this morning, in the conduct of the advertising campaign—the advertising that I wrote—no reference was made to Gov. Comer. To the best of my knowledge and belief, Gov. Comer's name was never mentioned.

Mr. FOLK. In advertisements that you wrote?

Mr. JOHNSON. That I prepared and sent out.

Mr. FOLK. You did not intend to convey the impression, then, that advertisements published through your agency did not mention Gov. Comer?

Mr. JOHNSON. Most assuredly not.

Mr. FOLK. And did not assail and attack him and discredit the things he was advocating?

Mr. JOHNSON. Most assuredly not. I had no such intention—of saying I never sent any advertisements from my office that did not mention Gov. Comer's name.

Mr. FOLK. I show you an advertisement published in the Montgomery Advertiser, October 9, 1912, "Judge Jones replies to insinuations of Comer."

Mr. JOHNSON. I have no knowledge of that advertisement at all. I do not know that I saw that particular article before.

Mr. FOLK. But you do remember these advertisements?

Mr. JOHNSON. Yes.

Mr. FOLK. "Milton H. Smith answers B. B. Comer."

Mr. JOHNSON. Yes; they were not sent to me by the Louisville & Nashville Railroad, however.

Mr. FOLK. Did Mr. Smith send them to you directly?

Mr. JOHNSON. No.

Mr. FOLK. George W. Jones?

Mr. JOHNSON. Yes, sir; and Mr. Smith sent me his personal check in payment for them.

Mr. FOLK. Mr. Smith did?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. Do you know whether the Louisville & Nashville Railroad Co. paid Mr. Smith?

Mr. JOHNSON. No.

Mr. FOLK. I show you an advertisement. "President M. H. Smith, of the Louisville & Nashville, defines the railroad's position in rate matters." Is that one of your advertisements?

Mr. JOHNSON. No.

Mr. FOLK. So the Louisville & Nashville had other agencies in advertising in Alabama at the same time it had your agency?

Mr. JOHNSON. Not that I know of. If it had, I had no knowledge of it.

Mr. FOLK. Did Mr. Jones have any of these advertisements inserted?

Mr. JOHNSON. I think Mr. Jones—it is merely a matter of thinking it; I have no personal knowledge of it—but I think Mr. Jones had caused some advertisements to be inserted previous to my connection with the company's advertising, and the details of it were unfamiliar to him, and for that reason he retained my services to conduct the advertising.

Mr. FOLK. From your knowledge as an advertising man, would you say that this article, "President M. H. Smith, of the L. & N., defines the railroad's position in rate matters" is an advertisement sent out to the different newspapers?

Mr. JOHNSON. Would I say that it is an advertisement?

Mr. FOLK. Yes.

Mr. JOHNSON. I have no idea to what newspapers this advertisement was sent.

Mr. FOLK. Is the form in which this article is gotten up such as to indicate that it was sent to the different newspapers to be published for a consideration?

Mr. JOHNSON. It may indicate that it was printed in this form for distribution as handbills, or something of that kind, or it may have been sent to newspapers in this form for reproduction.

Mr. FOLK. Are handbills usually printed in that style?

Mr. JOHNSON. Oh, yes; I have printed large numbers of handbills in this style.

Mr. FOLK. To make it appear as if it were an extract from a newspaper?

Mr. JOHNSON. No, sir; I do not know that this is made to appear that way. You have got hold of the wrong advertising man if you think I ever attempted any duplicity in my business, in any capacity, in any agency or any company.

Mr. FOLK. I am not asking about duplicity.

Mr. JOHNSON. Well, you say to make it appear as if it was done. I am not familiar with those kinds of practices.

Mr. FOLK. You know, as a matter of fact, they do not generally print handbills in that way?

Mr. JOHNSON. I have printed thousands in that same way—some for political candidates, by the way.

Mr. FOLK. These are usually inserts in newspapers, printed in this form, are they not?

Mr. JOHNSON. I have seen them used for that purpose.

Mr. FOLK. "Former Congressman Bowie continues to dissect erroneous and misleading statements by ex-Gov. Comer in Greenville speech." See if that was inserted through your agency.

Mr. JOHNSON. I could not swear positively concerning that particular advertisement, but my impression now is that it was. I would rather refer to my books before answering positively.

Mr. FOLK. Have you them with you?

Mr. JOHNSON. No; I had no opportunity to get my books. It will show on the bill of the Louisville & Nashville Railroad Co. whether or not it was inserted through my agency.

Mr. FOLK. For instance, that article by President Smith attacking ex-Gov. Comer and answering ex-Gov. Comer—that was published by you in a number of newspapers of the State?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. Was it published as news or as advertising?

Mr. JOHNSON. As advertising, and paid for at card rates.

Mr. FOLK. Did it appear as news or as advertising?

Mr. JOHNSON. Paid as advertising, in the form you see it there; display advertising, and so classified.

Mr. FOLK. Is there any mark on the paper to indicate it is advertising?

Mr. JOHNSON. There is no mark on any display advertising.

Mr. FOLK. Never is any mark?

Mr. JOHNSON. I have never seen one. I will take this issue of the Nashville Tennesseean this morning; here is one here.

Mr. FOLK. That speaks for itself.

Mr. JOHNSON. So do these.

Mr. FOLK. Here is one purporting to be a news item: "M. H. Smith answers B. B. Comer," and then follows an article by Milton H. Smith.

Mr. JOHNSON. Yes; but that is set in column-and-a-half measure; that is contrary to the usual set-up of news items or news stories published by newspapers. It is in display form. Had it been put in as reading notices or reading matter it would have been paid for at a higher rate than the rate for display advertising.

Mr. FOLK. Well, do you mean to say you have advertisements of that nature inserted in the newspaper as reading matter?

Mr. JOHNSON. No, sir.

Mr. FOLK. I understood you to say it cost more to have an advertisement inserted in the newspaper to appear as reading matter than to appear as advertising.

Mr. JOHNSON. It does.

Mr. FOLK. Then you do have advertisements inserted in newspapers to appear as reading matter and not as advertisements?

Mr. JOHNSON. And they are marked advertisements; reading notices that are advertisements are marked "Adv." at the end of the reading notices; they are classified by newspapers. If I send a reading notice to a newspaper, the rate on reading matter—advertising that is reading matter—is a higher rate per line or per inch, as the newspaper measures space, than matter sent to a newspaper to be set up in display form. The newspapers all recognize that and make their rates accordingly.

Mr. FOLK. You distinguish, then, between what you call display ads and reading-matter ads, do you?

Mr. JOHNSON. Oh, yes; all newspapers distinguish between those.

Mr. FOLK. And you say a reading matter ad costs more than display advertising?

Mr. JOHNSON. In most newspapers they make their rate card show that.

Mr. FOLK. You do not sell it by the space, by the inch, but by the kind of matter in the stuff you give them?

Mr. JOHNSON. They sell the space by the inch in display matter and by the agate line in reading matter.

Mr. FOLK. I show you here copy of account, Milton H. Smith, Louisville, Ky., to Johnson-Dallis Advertising Agency, and will ask you if this particular account is not in reference to these articles written by Mr. Smith answering Gov. Commer.

Mr. JOHNSON. It would appear so from this bill in this form.

Mr. FOLK. Can you tell how many newspapers of Alabama this article of Mr. Smith's appeared in?

Mr. JOHNSON. Not without reference to my books, I could not.

Mr. FOLK. According to this bill, how many newspapers had this article?

Mr. JOUETT. Are the dates given?

Mr. FOLK. Yes.

Mr. JOHNSON. I would just have to count the newspapers. From this bill it would appear that there are 33.

Mr. FOLK. Will you say there were more?

Mr. JOHNSON. I would have said offhand there were more. There may not have been more if this is a true copy of my bill rendered for the service. I do not know.

Mr. FOLK. Reading that at the bottom, it would indicate that there were more?

Mr. JOHNSON. That seems more like it.

Mr. FOLK. Now, you have before you an additional bill for advertising and publishing articles for the Louisville & Nashville Railroad or for Mr. Milton H. Smith. Can you indicate from that bill about how many papers carried this article of Mr. Smith?

Mr. JOHNSON. I do not know whether these are in addition to the first sheet or not; my opinion is that this large sheet contains all of the newspapers. It may be in addition, but I do not think so. I will count them. There seem to be 106 of them here, counted hurriedly.

Mr. FOLK. And 33 on the other list?

Mr. JOHNSON. Yes; but, as I say, I do not know whether those are in addition to those others or not. They may be; I do not think so, however.

Mr. FOLK. Now you published, of course, or had published, other articles in addition to these during 1912?

Mr. JOHNSON. Not by President Smith. I published other articles, but——

Mr. FOLK. For the Louisville & Nashville Railroad?

Mr. JOHNSON. Yes.

Mr. FOLK. Will you state whether or not this advertisement, signed by the Louisville & Nashville Railroad, was published through your agency?

Mr. JOHNSON. Yes, sir; I wrote those ads myself.

Mr. FOLK. You wrote those ads yourself?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. "Eleven rate facts."

Mr. JOHNSON. That advertisement was also published through my agency.

Mr. FOLK. And at the same time advertisements or articles were published as advertisements through the agency of others?

Mr. JOHNSON. Not that I know of.

Mr. FOLK. That is, through Mr. Jones?

Mr. JOHNSON. Not that I know of; not after my connection with the company's advertising.

Mr. FOLK. Look at this here.

Mr. JOHNSON. Not after my connection with the company's advertising.

Mr. FOLK. You had a monopoly of it after you made the arrangement you indicated this morning?

Mr. JOHNSON. I do not know whether you would call it a monopoly or not, but an advertiser would as soon think of employing two plants to manufacture his product as to employ two agencies to do his advertising. It would be an unprofitable proposition.

Mr. **Folk**. Did you and Mr. Jones work together?

Mr. **Johnson**. In what respect do you mean?

Mr. **Folk**. Advertising. I mean, did he bring you advertising to be inserted on behalf of the Louisville & Nashville Railroad?

Mr. **Johnson**. Mr. Jones would at times submit to me suggestions for advertisements, and at times he did send me certain advertisements to be considered and passed on by me.

Mr. **Folk**. Now, the purpose of advertising and publishing all these articles from President Smith as advertising matter was to influence public sentiment, was it not?

Mr. **Johnson**. I think it was for the purpose of correcting wrong public sentiment which had been created.

Mr. **Folk**. Just answer my question.

Mr. **Johnson**. I did answer your question.

Mr. **Jouett**. I think he has answered it.

Mr. **Folk**. The purpose, then, was to influence public sentiment; you think it was to influence it rightly?

Mr. **Johnson**. I think the purpose of this advertisement was to disseminate correct information on very important matters.

Mr. **Folk**. And thereby influence public sentiment?

Mr. **Johnson**. If public sentiment is susceptible of influence by correct information; yes.

Mr. **Folk**. Is not public sentiment susceptible of influence?

Mr. **Johnson**. Advertising has demonstrated that fact for years and years, Governor; yes.

Mr. **Folk**. In fact, that is your business?

Mr. **Johnson**. Absolutely.

Mr. **Folk**. To influence public sentiment through advertising?

Mr. **Johnson**. Yes; for the purchase of a soft drink, for the purchase of shoes, collars, etc.

Mr. **Folk**. And you were employed by the Louisville & Nashville Railroad for that purpose?

Mr. **Johnson**. I was employed by the Louisville & Nashville Railroad for the purpose of preparing and sending out advertising matter, to be paid for by the company.

Mr. **Folk**. To influence public sentiment?

Mr. **Johnson**. I should judge that the effect of the advertising would be good or bad, as far as public sentiment is concerned, depending upon the advertisements.

Mr. **Folk**. The railroad could have had no other purpose in paying all of these thousands of dollars to your concern for advertising, other than to influence public sentiment, could it?

Mr. **Johnson**. Governor, you are not going to get me to sit here and say that they had any ulterior motive to wrongfully influence public sentiment. I have stated positively that we proposed only to disseminate correct information. Not one article published through my agency has ever been controverted or refuted.

Mr. **Folk**. The Louisville & Nashville Railroad owed you no money at the time this contract was made, did it?

Mr. **Johnson**. No, sir.

Mr. **Folk**. And it paid you these thousands of dollars not by reason of being under obligation to you, but to secure your services to have these articles written and published, and to have you publish articles written by others; that is correct, is it not?

Mr. JOHNSON. Yes, sir.

Mr. FOLK. And the purpose of all these, of course, was to influence public sentiment?

Mr. JOHNSON. Properly and rightly; yes, sir.

Mr. FOLK. That is all.

Mr. JOUETT. Do you offer these articles in evidence?

Mr. FOLK. Yes.

(The papers so offered and identified were received in evidence and thereupon marked "Commission's Exhibit No. 1," witness Johnson, received in evidence April 29, 1916, and are attached hereto.)

Mr. JOUETT. You can not identify those with the specific questions you asked because you did not number them.

Mr. FOLK. But I read the headings from these articles.

Mr. JOUETT. Do you file this account as an exhibit also?

Mr. FOLK. I have not done so. If you desire me to do so, it can be done.

Mr. JOUETT. It is not important to us.

Mr. FOLK. No.

Cross-examination:

Mr. JOUETT. Where do you live?

Mr. JOHNSON. Atlanta, Ga.

Mr. JOUETT. How long have you been in the advertising business?

Mr. JOHNSON. Ten or eleven years.

Mr. JOUETT. You were not, then, employed specially by the Louisville & Nashville Railroad to look after this one matter?

Mr. JOHNSON. No, sir; I have other miscellaneous accounts.

Mr. JOUETT. What is the extent of your business briefly and your experience?

Mr. JOHNSON. Do you mean in the advertising business?

Mr. JOUETT. Yes; I mean in the advertising business.

Mr. JOHNSON. I engaged in the advertising business some 10 years ago, when I secured the account of the Southern Cotton Oil Co. in marketing two products, one known as Snowdrift and the other as Wesson Oil. I had at that time four or five other accounts, the chief of which was the Southern Cotton Oil Co. account. I have handled accounts and do now handle accounts in the interests of manufacturers of boots and shoes; I represent the Merchants and Manufacturers' Association of Atlanta and its advertising agent. I represent the Southern Express Co. as its advertising agent——

Mr. JOUETT. When did your connection with the Louisville & Nashville Railroad or employment by the Louisville & Nashville Railroad begin?

Mr. JOHNSON. I think it was the latter part of the year 1912, or the early part of 1913.

Mr. JOUETT. Did you have a written contract?

Mr. JOHNSON. I had an exchange of letters setting forth the basis on which this advertising was to be conducted.

Mr. JOUETT. Was that employment the result of the letter that was read this morning, in which you suggested this plan of advertising campaign?

Mr. JOHNSON. Indirectly, although the origin of the advertising came from the publisher or general manager, a friend of mine, general manager of a newspaper in Alabama who is a good friend of mine.

Mr. JOUETT. Are you well acquainted in Alabama, and with the general conditions in Alabama?

Mr. JOHNSON. I am reasonably so. I go to Alabama occasionally. I have an uncle in Birmingham; E. W. Barrett, editor of the Age-Herald.

Mr. JOUETT. Will you state clearly the terms of this contract under which you undertook to conduct this advertising in behalf of the Louisville & Nashville Railroad?

Mr. JOHNSON. Under the system of advertising agencies, there is in New York an organization known as the American Newspaper Publishers' Association, to which every reputable newspaper, practically every newspaper in the United States, belongs. The newspapers can not investigate the credit and ability of the various advertising agencies that send them business; consequently, if you or I, or both of us, wanted to engage in the advertising business we would have to make application to the A. N. P. A. for recognition. In doing that we would submit examples of our work, demonstrating our ability to intelligently handle advertising accounts. We would also file a statement of financial responsibility, together with moral responsibility. If the application was favorably acted upon, what is known as recognition would be extended. Each newspaper who is a member of this association would be advised, and, upon communicating with the newspaper that I desired to place business with it, I would be extended a commission of 15 per cent.

Mr. JOUETT. What is the plan by which the work is actually done?

Mr. JOHNSON. If you as an advertiser went to this newspaper office to buy advertising, the space, for instance, would cost you $1. I, as a recognized advertising agent, could secure that space for 85 cents.

Mr. JOUETT. It makes no difference then to the advertiser; he saves nothing by dealing directly with the papers; he has to pay the same to them as he does to you?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. Who looks after the credits; who stands for the responsibility of the advertiser under this arrangement?

Mr. JOHNSON. The newspapers charge all accounts and bills to me, and I think the Supreme Court has held that the advertiser is not responsible upon the failure of the agency to pay that amount, if it is established that the advertiser has paid the agency.

Mr. JOUETT. Then the matter was actually transacted in this way: That you made the contracts, the newspapers charged the space to you and you charged it to the company plus 15 per cent?

Mr. JOHNSON. No, sir; I charged it to the company at $1 and paid the newspapers at the rate of 85 cents.

Mr. JOUETT. Well, that is the way I intended to express it.

Mr. JOHNSON. The difference would be about 1.1 per cent, if I added 15 to 85 per cent.

Mr. JOUETT. I see. Now, will you state how long this contract between you and the Louisville & Nashville Railroad, during which you conducted this advertising campaign, lasted?

Mr. JOHNSON. Until January 5 of the present year.

Mr. JOUETT. That was three years, if you began about the 1st of January, 1913?

Mr. JOHNSON. Yes, sir.

Mr. **Jouett**. Now, during that time these articles that have been referred to by Gov. Folk, or at least a great portion of them, were placed by you in various newspapers throughout the State of Alabama?

Mr. **Johnson**. Yes, sir.

Mr. **Folk**. And the regular plan that you have described was pursued during the life of that contract?

Mr. **Johnson**. Yes, sir.

Mr. **Folk**. Your letter refers to the advertisement, I believe, as being either display advertising or reading matter?

Mr. **Johnson**. Yes, sir.

Mr. **Jouett**. Will you explain briefly to the commissioner what you mean by display advertising?

Mr. **Johnson**. Display advertising is classified by the American Newspaper Publishers' Association, which means the newspapers belonging to that association, as matter which, when set, will clearly indicate to the mind of the reader that it is not in the same type as the body type of the paper; it is usually in different form, frequently with display lines; that is, black cap lines interspersed through it, with a white space around it, to try to make it as prominent as possible.

And I might state in that connection that the prime motive in conducting this advertising was to make it as frankly apparent to the people of Alabama as it could possibly be done——

Mr. **Jouett**. Was that motive carried out in this case?

Mr. **Johnson**. In every single instance.

Mr. **Jouett**. As to the display advertising, what generally would it show? Not the subject matter, but with reference to the company that was making the advertisement; would it or not be signed or otherwise indicated as being the production of the Louisville & Nashville Railroad?

Mr. **Johnson**. Unquestionably.

Mr. **Jouett**. Its statement to the public?

Mr. **Johnson**. Yes, sir.

Mr. **Jouett**. Clearly shown in the display advertisement?

Mr. **Johnson**. Clearly.

Mr. **Jouett**. What was the character—do these exhibits filed by Gov. Folk comprise all of the display advertising that you placed?

Mr. **Johnson**. I have not examined this folio, but I am quite sure they do not. They have evidently selected here only those matters referring to what they term the political significance of the advertising, without reference to the real constructive, instructive advertisements that were published, which were the principal advertisements in the entire campaign.

Mr. **Jouett**. State to the commission what proportion you would say of the total number of display advertisements related to the other matters that you have mentioned, rather than to the Comer campaign.

Mr. **Johnson**. Eighty-five to ninety per cent of them.

Mr. **Jouett**. Will you tell the commissioner in a general way the nature and purpose of those general display advertisements, such as are shown here, and others which are not shown?

Mr. **Johnson**. The purpose of those advertisements was to acquaint the people with the multitude of detail and difficulties under which a railroad is operated. A series, I remember, was devoted to the matter, the first of which was entitled "Simply human."

Mr. JOUETT. What?

Mr. JOHNSON. "Simply human."

Mr. JOUETT. You mean that was the titl[illegible]

Mr. JOHNSON. That was the title of the first of a series.

Mr. FOLK. Who was simply human?

Mr. JOHNSON. Railroad employees; that they were susceptible of making mistakes, and that they sometimes, I think the humble phrase was "got up with a grouch on," they might speak what the patrons of the company considered a little sharp; that the Louisville & Nashville Railroad Co., anxious to render good service, regretted those things more than the people to whom they were said could regret them; they were anxious to cooperate with the people in giving them satisfactory service. Any complaints that the patrons of the road might have to make would be deeply appreciated if made to the officials of the road, in order that steps might be taken to correct this resentment on the part of the patrons. That crossties and rails and telephones and telegraphs and officers, brakemen, firemen, and everybody could not be kept under the immediate supervision; that the officials of the company endeavored to select the best possible men for the positions, and upon its failure to do so, it would appreciate it if the public would advise. That is the general line of that particular theory of advertisements extending over a considerable period of time.

Mr. JOUETT. Now, that series of advertisements was published through the various papers of Alabama?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. That was the series of display advertisements?

Mr. JOHNSON. The same type and display matter as those there.

Mr. JOUETT. Those advertisements are one and a half columns in width, and in many instances have a black border around them, have they not?

Mr. JOHNSON. No, sir; these are two columns in width, set what we term 22 ems space, leaving a white space on each side, with a black border around and signed by the Louisville & Nashville Railroad Co., so as to clearly indicate that they are paid-for display advertisements.

Mr. JOUETT. There could be no question in the mind of any person of intelligence but that they were advertisements put there by the railroad company for the purpose of expressing its views upon these subjects?

Mr. JOHNSON. Not the slightest.

Mr. JOUETT. Now, will you tell us of another series of advertisements?

Mr. JOHNSON. There was a series of advertisements conducted in the agricultural interest of the State.

Mr. JOUETT. Will you explain that briefly or fully, as you like, to the commissioner?

Mr. JOHNSON. Alabama is a wonderfully fertile but, in some respects, undeveloped State. The company has a most competent man in Mr. G. A. Park, located at Louisville, in the capacity, I think, of industrial and emigrant agent. The object of these advertisements was to attract people to Alabama, also to inform them as to the best methods of farming upon their arrival in Alabama. The company employed a corps of experts; I think they were men drawn from the leading colleges of the United States. They went to Alabama, and I was fortunate in attending a session there with them.

Mr. JOUETT. You mean the railroad company?

Mr. JOHNSON. These agricultural experts that were retained by the railroad company.

Mr. JOUETT. I say, they were employed by the railroad company to do that?

Mr. JOHNSON. Yes; and I think there were six or seven of them. One was an expert in cattle raising and hogs, and things of that kind; another one was an expert on fruit and berries, and things of that kind; another one was an expert on grain, oats, barley, corn, wheat, etc.; another one was an expert on grasses, hay, and crops of that character; and, I think, another one was an expert on vegetables, truck farming, and things of that kind.

The company accepted a series of advertisements that I prepared advocating that the people of Alabama attend certain demonstrations that these experts would give at different periods in different sections of the State.

These experts also prepared pamphlets illustrating the character of work in which they were engaged, the kind of fertilizers adaptable to certain soils, the manner of handling and raising cattle and hogs, and things of that kind, and the advertisements invited the public to write to the general offices in Louisville for copies of these various pamphlets or any other farming obstacle which might confront them in their daily work.

Mr. JOUETT. Do you think that information was true and valuable information, or was there any deception in any of it that you know of?

Mr. JOHNSON. Why, I think it is the best work that can possibly be conducted, and because it develops the basis of all wealth—the soil. One of them, by the way—and it is very important in Alabama—related to mining. To some minds it may seem that it was deceptive. To my mind it seemed we wanted to develop the territory along the line of the Louisville & Nashville Railroad with a view to creating additional traffic; and, if that be selfishness, I think it is laudable.

Mr. JOUETT. Was there any attempt to conceal the fact that the Louisville & Nashville Railroad expected to get some of the ultimate benefit out of this sort of information—the spread of this information—just as the people would get the benefit of it, and in accordance with what the people would get out of it?

Mr. JOHNSON. The only hope of benefit the Louisville & Nashville Railroad had to expect was to come after the people themselves had benefited through this character of work.

Mr. JOUETT. It was for the purpose of building up these different interests in the State of Alabama, was it not?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. And was it not clearly shown that the Louisville & Nashville Railroad could only get this benefit ultimately in the general prosperity that would come to the State itself?

Mr. JOHNSON. Yes, sir; that was the spirit and letter and everything of the advertising in that regard.

Mr. JOUETT. It was a fair statement of the fact that the railroad and the people were partners in the development of these interests in the State, was it not?

Mr. JOHNSON. Yes, sir; I think the spirit of the entire advertising, whether it related to the agricultural, mining, or service of the company or not, carried through the series the statement that the interests of the Louisville & Nashville Railroad and the interests of the people were interdependent; that if the people prospered the Louisville & Nashville Railroad would prosper.

Mr. JOUETT. Were there any other series of advertisements about which I have not asked you or about which you have not testified? If so, will you state them briefly?

Mr. JOHNSON. Well, I remember we had a series separate and distinct from the ones devoted to the farming. At a later period, the growth of cantaloupe in a section of Alabama became an important industry, and it was shown that it was among the best things that could be grown in that particular section, and we had a series of advertisements devoted to that work. There were so many of them, and it has been some time, that I could not refresh my mind without reference to the file. It is a conglomeration of advertising.

Mr. JOUETT. Now I want to ask you about the writing or reading matter advertisements. Will you state what your custom was about that, giving generally the character of those?

Mr. JOHNSON. I never handled any reading advertisements for the Louisville & Nashville Railroad that I myself prepared, but I think there were not more than five or six handled through my office that anyone else prepared.

Mr. JOUETT. Will it be possible for you to get up a complete list or a sample of each one of these advertisements and send them to us to be filed at some later time with the commission?

Mr. JOHNSON. That would be an extremely difficult proposition.

Mr. JOUETT. I do not mean to get one from every paper, but to get one advertisement of each kind.

Mr. JOHNSON. You see, I handle a number of advertising accounts, and my office would simply be flooded if I tried to keep a sample of each advertisement that I had; but I think I have practically all or nearly all these L. & N. ads, and I will cheerfully endeavor to do that.

Mr. JOUETT. Gov. Folk, have you any other of these advertisements that would be convenient to put in, so we would not have to duplicate them?

Mr. FOLK. They are all in there.

Mr. JOUETT. That does not profess to be at all complete, does it, Mr. Carleton?

Mr. CARLETON. No.

Mr. JOUETT. Now, you might at your leisure, if you have an opportunity, go over these that are here, so as not to duplicate them, and simply furnish those that were omitted or not put in by the Government.

Mr. JOHNSON. I think perhaps it would be easier for me to furnish a complete file, if I can furnish them at all.

Mr. JOUETT. Very well.

Mr. JOHNSON. In any event, I will endeavor to see that a complete file is submitted.

Mr. JOUETT. When we get those may we file them later as part of the witness's testimony?

Chairman MEYER. That may be understood.

Mr. JOUETT. Now, I wish to direct your attention to what Gov. Folk has spoken of as the Comer campaign. I will ask you when it was, if you recall, within these three years during which you represented this company in placing advertisements through that section, that any articles were inserted or began to be inserted that bore in any way upon the controversy between the Louisville & Nashville Railroad Co. and Mr. Comer? In other words, how long after your contract had been running before that matter came up, if it did come up?

Mr. JOHNSON. I do not remember and could not definitely say without reference to my file, but it was a considerable time. Just how long I do not remember.

Mr. JOUETT. Mr. Comer was at one time the chairman, I believe, of the Railroad Commission of Alabama?

Mr. JOHNSON. So I have been informed; yes, sir. I remember that.

Mr. JOUETT. Do you remember when he was elected governor? Do you recall whether it was about 1907 or not?

Mr. JOHNSON. I know he was governor of Alabama about that time. I do not recall when.

Mr. JOUETT. Were you familiar with the fact that during that campaign and subsequently Gov. Comer was and has been regarded as a very bitter enemy of the Louisville & Nashville Railroad Co., a man who has never lost an opportunity to villify and denounce and injure this company, if he could?

Mr. JOHNSON. That is the general impression that prevails, and I think it is true.

Mr. JOUETT. Now, do you know or have you seen the articles that he would publish at various times attacking the Louisville & Nashville Railroad Co. during this period?

Mr. JOHNSON. Yes, sir; I have seen some of those articles, but I am not in position to state definitely their contents. I very seldom burden my mind with the rantings of politicians; there are so many of them.

Mr. JOUETT. You have over 100 clients, I believe, that you do this work for from various parts of the country?

Mr. JOHNSON. About 114, I think, at the present time.

Mr. JOUETT. Now, will you tell the commission just what you can recall with reference to the articles that were published, when they began to be published, if any, through your agency, that in anywise related to these attacks of Mr. Comer.

Mr. JOHNSON. I think it must have been a year after I engaged in the advertising for the company. I would not be positive about it.

Mr. JOUETT. Now, what was the general character of those articles? I do not mean that you need undertake to give in any detail the substance, but you may state generally, and state how the [illegible]icles appeared in the paper and what their appearance was.

Mr. JOHNSON. Some of them were in the form of display matter, and I think one or two articles were sent out that were signed by Mr. Bowie, or that might not have appeared as reading matter. I saw one of them here. This article [indicating] is display matter. That is the one to which I have reference, the one entitled "Former Congressman Bowie continues to dissect erroneous and misleading statements of Ex-Gov. Comer in Greenville speech."

Mr. Jouett. Does not that appear plainly to be in column-and-a-half matter, which is customary for advertisements?

Mr. Johnson. Yes, sir.

Mr. Jouett. And is it not inclosed in a black mark or border that shows it to be an advertisement?

Mr. Johnson. Yes.

Mr. Jouett. As a newspaper man or as a citizen familiar with newspaper publications, would it be possible for that to deceive anyone or make the impression that it was other than an advertisement?

Mr. Johnson. Not the slightest, on a man who was at all familiar with the business.

Mr. Jouett. What was the character of other reading-matter advertisements?

Mr. Johnson. There is one that is clearly a display advertisement. I do not know whether that was——

Mr. Jouett. That one that you now refer to headed, in big black type, "Ex-Gov. Comer's statement denounced by Sydney J. Bowie as utterly false"?

Mr. Johnson. Yes, sir.

Mr. Jouett. "Former Congressman, who retired voluntarily, makes telling rejoinder to speech delivered at Greenville by former governor—Scores Comer for continual unfair attacks on Judge Jones, and disposition to try judicial questions on the stump instead of taking them into court, where they belong."

Mr. Johnson. Yes.

Mr. Jouett. I will ask you if it is not signed "Sydney J. Bowie"?

Mr. Johnson. Yes.

Mr. Jouett. And is not that also inclosed in black border?

Mr. Johnson. Yes.

Mr. Jouett. And does not the word "advertisement" in parentheses occur at the bottom of that statement?

Mr. Johnson. Yes.

Mr. Jouett. There can be no question, then, but what that was an open statement, and that was known to have been an advertisement presenting that side of the case?

Mr. Johnson. Unquestionably.

Mr. Jouett. Now, do you know of any other advertisements——

Mr. Johnson. This is the same advertisement set in different type, because this advertisement was published in a weekly paper and this in a farm journal, this occupying the whole page.

Mr. Jouett. Were those placed through your agency?

Mr. Johnson. Yes, sir.

Mr. Jouett. Now, any others that you see there in the exhibit?

Mr. Folk. How about this one [indicating]?

Mr. Johnson. That is a display advertisement, set in column and a half measure, black border all around; same advertisement.

Mr. Folk. Read the heading of that.

Mr. Johnson. "Ex-Governor Comer's statement denounced."

Mr. Folk. That is in what paper?

Mr. JOHNSON. The Courant, I think published at Greenville, Ala., I have forgotten just where the Courant is published. Shall I read the subhead?

Mr. JOUETT. Yes; read it, to show it is the same.

Mr. JOHNSON (reading):

> Former Congressman, who retired voluntarily, makes telling rejoinder to speech delivered at Greenville by former Gov. Comer for continual unfair attacks on Judge Jones, and disposition to try judicial questions on the stump instead of taking them into court, where they belong.

Mr. JOUETT. Does not that appear in column and a half matter, and is it not inclosed in the usual black border common to display advertisements?

Mr. JOHNSON. Yes, sir; with display line interspersed, as is customary in display advertisements.

Mr. JOUETT. Now, are there any others in this list which do not appear as plain advertisements, shown to be such, to the people?

Mr. JOHNSON. None whatsoever, nothing remotely contemplating duplicity was ever contemplated, suggested or practiced in this advertising conducted in the State of Alabama.

Mr. JOUETT. Mr. Bowie and Mr. Comer conducted a sort of newspaper debate, did they not?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. Some reference was made a moment ago to some article published over the name of Milton H. Smith, president of the Louisville & Nashville Railroad Co.

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. There was no doubt in the minds of the people of Alabama as to who Milton H. Smith was, do you think?

Mr. JOHNSON. No.

Mr. JOUETT. And have you any articles of that sort here; I mean, in this list furnished by Gov. Folk?

Mr. JOHNSON. Yes; those were the ones Gov. Folk attempted to make appear a while ago as being reading matter.

Mr. JOUETT. I will ask you if those do not appear in column-and-a-half matter in larger type than usual, and inclosed by a border with a big head line showing that they are also advertisements?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. The heading of one, I believe, is "The people will be advised. Milton H. Smith answers B. B. Comer." Do you recall that Mr. Comer had written an article attacking the Louisville & Nashville Railroad, to which this was an answer?

Mr. STONE. He made a speech.

Mr. JOUETT. Yes; so it was.

Mr. FOLK. Right over here you will find his speech [indicating].

Mr. JOHNSON. Yes; he made a speech, and in the course of his speech he not only attacked the Louisville & Nashville Railroad Co., but he attacked Mr. Smith.

Mr. FOLK. There is the speech.

Mr. JOHNSON. Yes.

Mr. FOLK. Read the heading of his speech.

Mr. JOUETT (reading):

> Ex-Gov. Comer at Greenville, Ala., August 30, 1912, sees in the approaching victory of Wilson end of a long struggle—Coming triumph of the unprotected many over the favored and protected few—Suborned courts are the last refuge

of the oppressor—Reviews the long struggle against railroad control in Alabama—Its citadel in the Federal court at Montgomery—Clarion call to the people to vindicate their rights and secure their liberty.

Now, Mr. Smith replied to that, did he not?

Mr. Johnson. Yes, sir.

Mr. Jouett. And Mr. Smith and Mr. Comer conducted a sort of debate?

Mr. Johnson. Yes. I will state, by the way, while we are on the subject, that that speech was very widely published without any indication whatsoever it was a possible advertisement.

Mr. Jouett. Does this show——

Mr. Folk. Was any payment made for it, do you know, Mr. Johnson?

Mr. Johnson. I am not informed as to Gov. Comer's financial operations, except in one instance.

Mr. Jouett. What is that one instance?

Mr. Johnson. Well, there are affidavits in existence covering that.

Mr. Folk. I do not think it is material.

Mr. Jouett. Well, you asked about it. I do not know anything about it.

Mr. Folk. Did the Louisville & Nashville pay him any money; is that your story?

Mr. Johnson. No, sir; they made him pay them some.

Mr. Folk. They made him pay them some?

Mr. Johnson. Yes, sir. Gov. Comer—I do not know that he was governor then, but he was a dealer in flour, and there is a rate on flour that is very much higher than the rate on meal, and Gov. Comer had shipped to him in meal sacks, labeled "meal," flour, and paid for it at the meal rate, and undersold his competitors.

Mr. Folk. Who told you that?

Mr. Johnson. I read the affidavits.

Mr. Folk. Who made the affidavit, Mr. Smith?

Mr. Johnson. What Mr. Smith?

Mr. Folk. Mr. Milton H. Smith. I notice that is referred to in one of those advertisements.

Mr. Johnson. Not that I know.

Mr. Folk. Who made the affidavit?

Mr. Johnson. I think Mr. de Funiak, who discovered the discrepancy, and Gov. Comer paid the difference.

Mr. Jouett. Do you mean to say that the governor of Alabama shipped flour and inclosed it in sacks and said it was meal, because the rate was lower, and got the shipment for that lower rate?

Mr. Johnson. No; what I mean to say was that he was charged with having done that, and there were affidavits to that effect, and he paid the difference in the rate.

Mr. Folk. You were there when he paid it?

Mr. Johnson. No.

Mr. Folk. How do you know it?

Mr. Johnson. The affidavits show it.

Mr. Folk. Do you know what kind of meal it was?

Mr. Johnson. Jim Dandy.

Mr. Folk. What kind of flour?

Mr. Johnson. Jim Dandy flour.

Mr. Folk. Both Jim Dandy meal and Jim Dandy flour?

Mr. JOHNSON. They were Jim Dandy meal sacks, but the flour was Jim Dandy.

Mr. FOLK. And what sort of meal was shipped in the Jim Dandy flour sacks?

Mr. JOHNSON. It was not meal shipped at all; it was flour shipped in meal sacks.

Mr. FOLK. What was the brand of the flour?

Mr. JOHNSON. Jim Dandy.

Mr. JOUETT. Now, do you know that that statement of fact was widely circulated all over Alabama—this deception upon the part of Mr. Comer in order to get this lower rate?

Mr. JOHNSON. Yes, sir; that is a matter of general knowledge in Alabama.

Mr. JOUETT. And was it ever denied by Gov. Comer?

Mr. JOHNSON. Not that I ever heard.

Mr. JOUETT. Is it not a well-known and notorious fact that that never was denied, but that he was forced to pay, and did pay, the difference in the rate because of that deception?

Mr. JOHNSON. That is the general knowledge of people in the State of Alabama.

Mr. FOLK. Do they claim that he shipped flour in the meal sacks?

Mr. JOHNSON. Governor, they claim that that fact existed. I do not know whether they claim that he actually put it in or not.

Mr. FOLK. Was it shipped to him, or did he ship to somebody else?

Mr. JOHNSON. It was f. o. b. meal to him.

Chairman MEYER. I do not see just how that will help the commission in the decision of this question.

Mr. JOUETT. Only Gov. Folk brought up the question of Comer's dealings in this matter.

Mr. FOLK. Indeed, I did not bring up anything about Gov. Comer, except his relation to the Louisville & Nashville Railroad.

Mr. JOHNSON. That certainly is his relation.

Mr. FOLK. The efforts of the Louisville & Nashville in the campaign in Alabama; that is what I referred to.

Mr. JOUETT. This became a very important part in the campaign in Alabama, Governor.

Now, with reference to the continuation of this advertising campaign, that ran, I believe you say, up until about the first of this year?

Mr. JOHNSON. Yes.

Mr. JOUETT. Do you remember the last race down there for governor? When was that? Is it not true he was elected governor in 1907, held until 1911, and then ran again for election in 1915?

Mr. STONE. 1914.

Mr. JOUETT. 1914.

Mr. JOHNSON. I think those are about the dates.

Mr. JOUETT. In this last election did this controversy continue between Mr. Comer and the Louisville & Nashville Railroad?

Mr. JOHNSON. Yes.

Mr. JOUETT. And this advertising went on as usual?

Mr. JOHNSON. Yes.

Mr. JOUETT. And do you know the result of it—as to which side of this controversy the people decided for?

Mr. JOHNSON. Well, the people defeated Mr. Comer; I know that.

Mr. JOUETT. You were asked something about securing editorial favors——

Mr. JOHNSON. No, sir. I was asked that; yes.

Mr. JOUETT. I do not know whether you stated that clearly or not, but did your contract call for that, and did you secure that in the way of editorials or complimentary or helpful articles from these various newspapers without its being known that they were articles from the Louisville & Nashville Railroad?

Mr. JOHNSON. Judge Jouett, I do not like the term "editorial favor." I never asked an editorial favor of a newspaper in my life.

Mr. JOUETT. Just state the facts.

Mr. JOHNSON. The only reference I made to editorials or news stories was the fact that I would endeavor to see that fair play was rendered, which was all I would contract to do for anybody. I never attempted to subordinate or influence any newspaper unfairly in my life.

Mr. JOUETT. And you did not do anything of that sort in this campaign?

Mr. JOHNSON. No, sir.

Mr. JOUETT. Your articles, if I understand it, were all either these big display advertisements or other reading advertisements, which showed they were advertisements, either over the name of some man or the Louisville & Nashville Railroad Co.?

Mr. JOHNSON. Yes, sir.

Mr. JOUETT. Now, how many papers did you place these advertisements in?

Mr. JOHNSON. It would be impossible to say.

Mr. JOUETT. Just roughly speaking?

Mr. JOHNSON. About 125 or 130.

Mr. JOUETT. You did not know what you would be expected to testify about or what you would be asked about, I believe you stated, when you came here?

Mr. JOHNSON. No, sir; except in the most general way.

Mr. JOUETT. Then you did not bring the full statement of your account?

Mr. JOHNSON. I brought no statement of my account other than a hurriedly prepared——

Mr. JOUETT. I do not recall whether Gov. Folk showed you any accounts this morning that gave, or undertook to give, the total amounts that were paid you in the three years for this advertising throughout Alabama. Did you, Gov. Folk? Did you state that amount, do you recall?

Mr. FOLK. $40,000.

Mr. JOUETT. He said between $30,000 and $40,000, but I asked him if you showed him any account which showed what it amounted to. If you have that account, Mr. Carleton, I would be glad if you would let us have it, unless the witness can say whether or not it is correct.

Mr. CARLETON. What is it?

Mr. JOUETT. The amount of money paid by the Louisville & Nashville Railroad to this gentleman for this advertising during those three years. We, of course, do not know anything about it and have no records here at all.

Mr. Folk. That is for a few months and not for a few years, Mr. Carleton.

Mr. Jouett. I do not know. Let him say about that.

Mr. Carleton. This statement that we have here is a compilation of in the neighborhood of $34,000, covering the period from August, 1912, to June, 1914.

Mr. Jouett. From August, 1912, to June, 1914. Now, will you examine that and see whether, considering the bills prior to August, 1912, and after June, 1914, during the period of this contract, state whether or not you think that is approximately right, or if you can give any definite estimate after refreshing your recollection, do so. We merely want to get the fact, whatever it is.

Mr. Johnson. I would accept this as being approximately correct. As I stated, I telephoned my office when I received this summons, or the day after, and requested that they take off on the ledger sheet the amount of money expended; the bookkeeper may have left one sheet of the ledger in the transfer binder; I do not know, but the total of the figures handed me, and this is the original, was $25,586.89. It might be a little more; I do not know.

Mr. Jouett. I believe you stated, this morning, that it was your recollection that it was not correct, and that it must have run somewhere between $30,000 and $40,000.

Mr. Johnson. Well, I was surprised when these figures were handed me, but did not have time to verify them.

Mr. Jouett. I believe that is all, Governor.

Redirect examination:

Mr. Folk. Just a moment. About Gov. Comer, since it has been mentioned and you have not cleared it up, after this incident of some one shipping him flour or meal labeled as flour, he was elected governor, was he not?

Mr. Johnson. I do not remember; I do not remember whether it was after that incident or before, it probably was, that he was elected governor.

Mr. Folk. He was elected soon after that?

Mr. Johnson. I think so.

Mr. Folk. You saw an affidavit by a man named what—De Moniac, or——

Mr. Johnson. De Funiak.

Mr. Folk. De Funiak?

Mr. Johnson. Well, it was a subject of considerable controversy in Alabama, and a large number of statements were made concerning it. I have seen an affidavit concerning it, but——

Mr. Folk (interposing). By whom?

Mr. Johnson. By Mr. de Funiak, I think.

Mr. Folk. Is he an employee of the Louisville & Nashville Railroad?

Mr. Johnson. Yes, sir; an investigator.

Mr. Folk. Where did you see that?

Mr. Johnson. I think I saw that in Montgomery, Ala.

Mr. Folk. How did you happen to be present when this affidavit was opened up?

Mr. Johnson. Governor, in the preparation of advertisements in the interests of the Louisville & Nashville Railroad, it was necessary that I do a great deal of reading and studying, and I secured a lot of the company's literature, briefs, matters relating to operation, and things of that kind. I am not a railroad man, and had never handled railroad advertising for them, and I was naturally anxious to make good on it, and I read a good deal of matter and secured a great deal of information on subjects that were of no subsequent use to me, and I think that in the perusal of these various articles, I found this statement or affidavit or something of that kind. But it has been—it is a matter of public jest in Alabama. I have heard it dozens of times.

Mr. Folk. Was it a printed affidavit or the original affidavit which you saw?

Mr. Johnson. Printed affidavit.

Mr. Folk. Just a copy of the original?

Mr. Johnson. Yes.

Mr. Folk. Given you by one of the Louisville & Nashville Railroad officials, was it?

Mr. Johnson. Not as a separate and distinct proposition for me to read. I read it. I went off from Montgomery two or three times with a gripful of pamphlets and booklets and literature.

Mr. Folk. You stated in effect that you felt justified in conducting a campaign against Gov. Comer, because you regarded him as a public enemy by reason of his unfair attitude.

Mr. Johnson. I never stated—my opinion of Gov. Comer was formed long before I ever dreamed of conducting an advertising campaign for the Louisville & Nashville Railroad.

Mr. Folk. These advertisements you have referred to in answer to questions of Mr. Jouett were in response to this Greenville speech of Gov. Comer, were they?

Mr. Johnson. You will have to mention specifically the advertisements that were published. I did not write any advertisements referring to his Greenville speech.

Mr. Jouett. Mr. Bowie's statement covers that.

Mr. Folk. You inserted Mr. Bowie's speech which answered Mr. Comer's Greenville speech?

Mr. Johnson. Mr. Bowie's speech was sent to me in typewritten form, and then my office set it up in type and had plates made of it and sent it out either by parcel post or by express to the various newspapers receiving the advertisement from the Louisville & Nashville Railroad.

Mr. Folk. And President Smith's statements were in answer to this speech of Gov. Comer, were they not?

Mr. Johnson. Yes, sir; I think so; I am quite sure they were.

Mr. Folk. Will you glance at that speech and point out anything in it that shows it was a public enemy you were fighting there?

Mr. Johnson. I did not say I was fighting any public enemy. I was not fighting Gov. Comer at all. I said my personal opinion—I have no connection with the Louisville & Nashville Railroad. I formed my opinion of Gov. Comer long before I ever expected to have, and never expect to have any further, connection with the Louisville & Nashville Railroad. I stated my personal opinion was that he is a burdensome liability to the State of Alabama. That has nothing to do with all this controversy at all.

Mr. FOLK. Will you examine that exhibit and state if the issue made by that speech is not with respect to the domination of politics by a railroad, and courts, and lower freight rates?

Mr. JOUETT. You would hardly expect to find the proposition of that in his own speech

Chairman MEYER. If the witness knows from previous reading how to answer the question, all right, but I do not think we will take time now.

Mr. FOLK. Can you answer it now?

Mr. JOHNSON. No; I can not. I do not know that I ever read it through entirely.

Mr. FOLK. Did these advertisements you had published give you any influence at all over the editors that published them?

Mr. JOHNSON. Mr. Folk, I would not do business with an editor that could be influenced in any way—unfairly, unduly influenced.

Mr. FOLK. Influenced at all. If he was unfair before, would it give you an influence to make him fair?

Mr. JOHNSON. Frequently a man is unconsciously unfair in that he is ignorant of what he does, or he does what he does through lack of information or incorrect information.

Mr. FOLK. Well, was there any change in the editorial policy, for instance, of these newspapers in which you published these advertisements?

Mr. JOHNSON. In their editorial policy?

Mr. FOLK. Yes.

Mr. JOHNSON. I do not know that I have ever observed any. They have in Alabama anti-Comer papers and pro-Comer papers, as they had previously.

Mr. FOLK. Did any of these papers become any more fair toward railroads after publishing these advertisements than before?

Mr. JOHNSON. I do not know that they did or that they did not. I think that a lot of the information contained in the advertisements was a revelation to the newspaper people themselves.

Mr. FOLK. You stated in your letter to Mr. Jones—

> The agency is thoroughly equipped to check up every newspaper published in the State of Alabama and get its attitude toward the railroad company, and by reason of that fact it can and will exert upon editors with whom it advertises influence to treat the railroad company fairly.

Mr. JOHNSON. Yes, sir.

Mr. FOLK. That is a correct statement?

Mr. JOHNSON. That is a correct statement.

Mr. FOLK. That is all.

Recross-examination:

Mr. JOUETT. I believe you stated that Mr. Comer's different campaigns were pitched upon this railroad issue, and it was the denunciation of the Louisville & Nashville Railroad that he relied upon, was it not?

Mr. JOHNSON. So I am informed; yes.

(Witness excused.)

Mr. FOLK. I will call Mr. George W. Jones.

(No response.)

Mr. FOLK. Newman F. Thompson?

(No response.)

Mr. Colston. I know Mr. Jones is here, but while we are waiting for him, why would it not be well to go on with Mr. Carleton now?

Mr. Folk. Here are a number of copies of the vouchers of the company for expenditures in Alabama. You might glance over them and see if you have any objection to them.

Mr. Jouett. We have not seen or heard of them, Governor.

Mr. Folk. That is what I am giving them to you now for, to examine. [Hands papers.]

George W. Jones was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Folk. Your full name?

Mr. Jones. George W. Jones.

Mr. Folk. Where do you live?

Mr. Jones. Montgomery, Ala.

Mr. Folk. What is your occupation?

Mr. Jones. I am a lawyer.

Mr. Folk. Are you an attorney for the Louisville & Nashville Railroad Co.?

Mr. Jones. Yes, sir; the Louisville & Nashville Railroad Co. is one of my clients.

Mr. Folk. Are you a district attorney or local attorney?

Mr. Jones. District attorney.

Mr. Folk. For the State of Alabama?

Mr. Jones. Yes, sir.

Mr. Folk. How long have you been an attorney for the Louisville & Nashville Railroad in Alabama?

Mr. Jones. I have been district attorney, I think, about seven years—eight years; assistant district attorney prior to that time for several years; I suppose I might say I have been an attorney for the company something like 20 years.

Mr. Folk. What are your duties as district attorney, to try cases?

Mr. Jones. That is part of my duty; yes, sir; and general supervision of the litigation in the district under the supervision of the general counsel and general solicitor and general attorney.

Mr. Folk. And to look after the welfare of the road generally?

Mr. Jones. Well, I think that is the duty of everyone working for an institution, to look after its welfare.

Mr. Folk. Do you recall having a number of articles published in newspapers of Alabama in 1912 during the campaign there for lower rates?

Mr. Jouett. If your honor please, this is the first official of the company who has been placed on the stand in this examination——

Mr. Folk. Wait until I ask one more question before you object. I will ask you, Mr. Jones, if you distributed in the State of Alabama, on behalf of the Louisville & Nashville Railroad, campaign funds favoring the election of a certain candidate?

Mr. Jouett. Now, if your honor please, as I started to say, Mr. Jones is the district attorney for the Louisville & Nashville Railroad Co. He is the official of the company who has charge of its affairs in the State of Alabama. I have made objection on behalf of the Louisville & Nashville Railroad to any evidence in regard to the first 12 paragraphs in this investigation upon the ground that there is no authority in the commission under any act of Congress or any other law to consider these subjects. Particularly is that true, according to our view, with reference to the twelfth paragraph, which covers or calls for information with reference to campaign contributions and other matters of a like political nature.

Now, because of this view that we entertain about it I desire to object to the witness answering this question.

Mr. FOLK. Do you wish to instruct the witness not to answer it?

Mr. JOUETT. I want to see what his honor does with my objection first. I desire first to object to this witness giving any answer to the question which has just been asked by Gov. Folk.

Chairman MEYER. And for the purposes of the record and on behalf of the commission I shall have to instruct the witness to answer.

Mr. JOUETT. With entire respect to the chairman and to the entire commission, I advise the witness not to answer the question.

Mr. FOLK. Do you accept the advice?

Mr. JONES. Yes, sir.

Mr. FOLK. You do?

Mr. JONES. Yes, sir.

Mr. JOUETT. Under advice of counsel you decline to answer?

Mr. JONES. Under advice of counsel I decline to answer.

Mr. FOLK. I show you a letter dated September 12, 1912, addressed to you from President Smith, of the Louisville & Nashville Railroad, and ask you if you recall having received that letter?

Mr. JOUETT. We object to the witness answering that question. For the sake of the record, you may consider it as read into your question, Governor.

Mr. FOLK. All right.

Mr. JOUETT. I also give the witness the same advice as to his answer.

Mr. FOLK (reading):

SEPTEMBER 12, 1912.

GEO. W. JONES, ESQ.:

Herewith certain memorandums which may be used to advantage:

The campaign will be a long one, and I advise that instead of making a comprehensive answer to Comer's emanations that one point be covered at a time—made as brief as possible and disseminated one at a time. We did this quite effectively in 1884–85. Puncture one error at a time, and possibly create an interest in future punctures. I do not give specific instructions, but leave the conclusion as to what is best to you and your associates. These memorandums if used need not in any way interfere with anything that Mr. Bowie or others may do.

It may be best to publish without a responsible signature. If a pen name is desired, I suggest "Irulus." If deemed best, publish over my signature. In any event I will be responsible.

Yours, truly,

(Copy not signed) ——— ———,
President.

Mr. JOUETT. You make the same answer?

Mr. JONES. I make the same answer under advice of counsel.

Chairman MEYER. I do not know that it will be necessary to make a separate ruling in each case, but the ruling, of course, will be the same; the witness will be instructed to answer.

Mr. JOUETT. And I will make the same objection and give the same advice to the witness.

Mr. Folk. I show you a letter, dated June 11, 1912, to Col. H. L. Stone, general counsel. This letter purports to be signed by yourself. I will ask you to examine this copy and state whether or not it is a copy of an original letter that you wrote.

Mr. Jouett. I make the same objection to this question and give the same advice to the witness.

Chairman **Meyer.** And the same instructions from the commission.

Mr. Jones. The witness gives the same answer.

Mr. Folk (reading):

ALABAMA RATE LITIGATION.

June 11, 1912.

Col. H. L. Stone,
General Counsel, Louisville, Ky.

Dear Sir: Your letter of June 10 bearing upon the communication of Judge Thorington, the editorial in the Advertiser, etc:

I have been urging Col. Gunter for several days to write an article along the lines suggested in your letter, and he has promised me to do so. I told him I would see to it that it was widely published in the State press, if he would prepare it.

In the meantime, under authority of the president's letter to me, of the 10th instant, I am forwarding Judge Thorington's communication which appeared in the Advertiser of June 8, to a number of weekly papers requesting them to publish the same and send me their bills for the publication. I am by the same letter requesting them to reproduce the editorial in the Advertiser of the 7th instant, headed "The expected has happened." I have so worded my letter as to induce them, I think, to reproduce the editorial without pay. I inclose copy of the letter I am sending the editors.

Yours, truly,

Geo. W. Jones,
District Attorney.

Copy to Mr. M. H. Smith, president.

I show you another letter, dated June 11, 1912, purporting to be signed by yourself, and will ask whether or not you signed the original of that letter.

Mr. Jouett. I make the same objection and give the same advice to the witness with reference to that letter. I think it ought to be read, perhaps, before that is done, so it becomes part of your question.

Mr. Folk (reading):

Montgomery, Ala., *June 11, 1912.*

Dear Sir: I inclose herewith page 4 of the Montgomery Advertiser of June 8, on which you will find a marked article entitled "Some of Comer's statements corrected," signed by Judge W. S. Thorington, the special master in one branch of the railroad rate litigation.

If you will reproduce this article, I am authorized to pay you $10 for its publication on receipt of your bill.

I also call your attention to an editorial which appeared in the Montgomery Advertiser in its issue of June 7, headed "The expected has happened."

It occurs to me that if you have not heretofore reproduced this editorial, you might deem it of sufficient interest to your readers to reproduce it in your next issue, and I am, therefore, inclosing you marked copy.

Yours, truly,

Geo. W. Jones,
District Attorney.

Mr. Jouett. I make the same objection with reference to that question, and give the same advice to the witness.

Chairman **Meyer.** The same ruling.

Mr. **Jones**. The same answer.

Mr. **Folk**. I show you a letter dated June 21, 1912, addressed to Col. H. L. Stone, purporting to be signed by yourself, and ask you whether or not you wrote the original of which that purports to be a copy. It is as follows:

Col. H. L. Stone,
General Counsel, Louisville, Ky.

Dear Sir: When Mr. Mapother was in this office a few days ago, I called his attention to the unhappy effect it had upon some of our country editors when they did not receive voucher promptly in payment of bills for publishing certain articles, and he authorized me to draw voucher in my favor for $900, to take care of the bills that would be rendered by the papers to which we sent Judge Thorington's communication, offering to pay them $10 each.

Since that time, as you are aware, Col. Gunter's communication has appeared, and I am sending it out to the weekly press located on and contiguous to our lines, and offering the editors $20 each for its publication, hoping by that means to economize, since it would cost considerably more than that even at what the editors consider a cut rate—5 cents per line. The article amounts to 476 lines on the editorial page of the Advertiser, and this, figured at 5 cents per line, would amount to $23.80.

On account of the heavy expense, and also on account of the fact that the Central of Georgia and the Western Railway of Alabama have also agreed to do some publicity work, I have thought it best to economize to the extent of only sending this communication to about 43 papers located on our lines, trusting that readers in other portions of the State may see it in the daily papers.

In order to enable me to handle the bills for publication of Col. Gunter's article in the same manner as I am handling those of Judge Thorington's article, I have drawn voucher in my favor for $860, which I inclose herewith, and which I will thank you to approve and pass for payment, so that I may deposit the amount in the bank here to my credit and draw checks on it, as I am doing in the Thorington publication.

While I will be in Baltimore a good portion of next week, still I will leave instructions for checks to be drawn as fast as bills come in, so that when I return I can sign the checks and remit for the bills that may be rendered before I return.

I am inclosing herewith a list of newspapers to which we are sending Mr. Gunter's communication, having eliminated from the list some of those who have commented unfavorably upon previous articles. I also inclose copy of mimeograph letter which I am using in sending Col. Gunter's article to the newspapers.

Yours, truly,

Geo. W. Jones, *District Attorney.*

I ask you to examine——

Mr. **Jouett**. If you have several of those letters, you can put them all in your one question.

Mr. **Folk**. I have already asked him the question in regard to this, whether or not he recognizes this as a copy of the original letter which he wrote.

Mr. **Jouett**. You did not wait for an answer.

Mr. **Folk**. I understood him to refuse.

Mr. **Jouett**. Nothing has been said about that letter, but I make the same objection and give the same advice to the witness.

Chairman **Meyer**. And I shall instruct the witness to answer.

Mr. **Jones**. The witness declines to answer on advice of counsel.

Mr. **Jouett**. I would suggest, if you care to, that you read into your question just as many as you want.

Mr. **Folk**. You make no objection by reason of these being copies?

Mr. **Jouett**. No; I will not object by reason of these being copies, but solely on the other ground.

Mr. **Stone**. We do not waive anything.

Mr. **Folk**. I show you letters appearing on pages 227, 228, 241, and 242, all purporting to be copies of letters either written to you or by you, and will ask you whether or not you recognize these copies as copies of original letters, either written by you or to you?

Mr. **Jouett**. How far did you say you go to—what pages?

Mr. **Folk**. 227, 228, 241, and 242.

Mr. **Jouett**. The letter on pages 230 and 231 is neither signed nor——

Mr. **Folk**. I did not say 231. I said 241.

Mr. **Jouett**. I thought you said straight through.

Mr. **Folk**. No. [Reading:]

Birmingham, Ala., *July 22, 1912.*

Mr. George W. Jones,
Montgomery, Ala.

Dear George: In the Ledger to-day former Gov. Comer is quoted in his Oneonta speech as follows:

"Gov. Comer declared that George W. Jones, district counsel of the Louisville & Nashville, was paying out thousands of dollars to have the newspapers publish statements. He exhibited letters written by Mr. Jones to the papers asking them to publish certain statements as news matter, for which they were to be paid."

Was there anything in your letter that could not be published? I am thinking about writing a reply to that statement to the Ledger, but before doing so I would like to see a copy of the letter you wrote and which he is handing out. Of course, will make no answer without conferring with you further.

Yours, very truly,

Sydney J. Bowie.

Subject: Publicity campaign.

Montgomery, Ala., *August 28, 1912.*

Mr. W. L. Mapother,
First Vice President, Louisville, Ky.

Dear Sir: Please note inclosed letter from Mr. Edwin F. Johnson, of the Johnson-Dallis Advertising Agency, dated Atlanta, August 26, with clipping from the Birmingham Age-Herald of Sunday, August 25, containing Nesbitt's reply to Mr. Bowie, which I note is reproduced from stereotype, and I take it therefore will be widely disseminated.

With return of inclosed letter I would appreciate it if you would give me any suggestions you care to make as to the reply I should make to Mr. Johnson.

Nesbitt will, in my opinion, be a candidate for railroad commissioner, and I can conceive of nothing more unfortunate than for him to be elected. It will require the combined wisdom and diplomacy of all of us to defeat him. He is poisoned against the railroads, and has not in his entire make-up one element of fairness, honesty, or justice, in my opinion. You will recall that he was a member of the firm of Knight-Yancey & Co., and doubtless mixed up in some of its irregularities. * * *

I have not yet sent the inclosed letter to Mr. Bowie, as I do not know just how he would take it. He might construe it as a criticism upon the manner in which he is writing. I am sure it is not intended as a criticism, but is merely giving expression to a line of policy which Mr. Johnson thinks should be pursued, and if you should think well of it you might wish to transmit these suggestions to Mr. Bowie. * * *

After you have considered this letter from Mr. Johnson I will appreciate it if you will favor me with your comments.

Yours, truly,

Geo. W. Jones, *District Attorney.*

Montgomery, Ala., *August 13, 1912.*

Mr. W. L. Mapother,
First Vice President L. & N. R. R. Co., Louisville, Ky.

Dear Sir: At the celebration of the opening of the Tuscaloosa Mineral Railroad at Tuscaloosa the principal speech was made by Mr. A. S. Vandegraaff, a prominent lawyer of Tuscaloosa. In that speech he took occasion to review some of the development work by President M. H. Smith and the L. & N. Railroad Co. in Alabama, and especially in the mineral district; and also took occasion to criticize the narrow policy of ex-Gov. Comer and his administration, which prevented any development for four years. The speech is pronounced by all who heard it as a masterpiece, calculated to do immense good if disseminated.

The editor of the Tuscaloosa News came to see me this morning with a proposition to publish this article in the daily News of next Sunday, and also in the weekly edition on the following Thursday, and I have had suggestions made to me by other citizens of Tuscaloosa that it will be well to have it published. Mr. Leon C. Bradley, one of he editors of the News, tells me that he believes that if I will have the article published the Tuscaloosa Board of Trade will buy a large number of copies for distribution, and perhaps publish it in pamphlet form. He brought the manuscript with him, and I read it; it is superb.

He has made me an extremely low rate of a total of $100 for publishing the article, consisting of about nine columns, in the Tuscaloosa News of next Sunday and the weekly News of the following Thursday.

I recommend that you authorize me to have this done and will thank you to wire me upon receipt of this whether you will authorize it or not. It is necessary that prompt action be taken in order that he may set the type for Sunday's issue.

Yours, very truly,

Geo. W. Jones, *District Attorney.*

Mr. Jouett. I desire to make the same objection and give the witness the same advice.

Chairman Meyer. The witness is instructed in the same way by the commission.

Mr. Jones. The witness, under advice of counsel, declines to answer.

Mr. Folk. I show you Ledger H, folio 454, from the records of the Louisville & Nashville Railroad, showing certain vouchers sent you in Alabama for various amounts, and will ask you how you expended the money represented by these vouchers, taking the first voucher as a beginning.

Mr. Jouett. Out of the record, Governor, is that the same as you have given us here?

Mr. Folk. I think not.

Mr. Jouett. There are quite a considerable number. It will take five or six minutes to look over them. I would like to ask just one question, Mr. Jones. If you have examined that list of vouchers, I will ask you to state first to the commissioner whether or not they relate to the matters embraced in the twelfth paragraph of this investigation; that is, the senate resolution which has been incorporated into the order of investigation.

Mr. Jones. From such examination as I have been able to make of the memorandum it seems to me the items are embraced in the twelfth section.

Mr. Jouett. I therefore object to the question, Mr. Commissioner, and give the witness the same advice.

Chairman Meyer. And the witness is instructed to answer.

Mr. Jones. Under advice of counsel, the witness declines to answer.

Mr. Folk. You think they are embraced in the twelfth section, in respect to money expended for political purposes?

Mr. Jouett. I object to any further discussion of it, and give the witness the same advice. He has stated that they come within the twelfth section.

Mr. Folk. You will admit the twelfth section relates to moneys expended for political purposes?

Mr. JOUETT. I do. That is one of the things it relates to.

Mr. FOLK. I will ask you, Mr. Jones, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad and of the Nashville, Chattanooga & St. Louis Railway used to the extent of thousands of dollars for political campaign purposes in the State of Alabama.

Mr. JOUETT. I object to that question, and give the witness the same advice.

Chairman MEYER. The witness is instructed to answer.

Mr. JONES. Upon advice of counsel, the witness declines to answer.

Mr. FOLK. Do you refuse to answer on the ground that the answer might incriminate you?

Mr. JONES. Upon advice of counsel, I decline to answer.

Mr. FOLK. Do you decline to give any reason other than advice of counsel?

Mr. JONES. That is the only reason I have given.

Mr. FOLK. You are asserting no personal privilege, are you, as an attorney?

Mr. JOUETT. I advise the witness that he has a right to rely upon any privilege that he cares to assert.

Mr. FOLK. We would like to know whether it is upon his privilege as an attorney or constitutional privilege.

Mr. JOUETT. The evidence being, as we consider it, wholly without the jurisdiction of the Interstate Commerce Commission, we think it is sufficient, upon the previous showing, for the objection to be sustained, and in view of your honor's overruling the objection, we think it sufficient for the witness to rest upon the advice of counsel, not to answer at all.

Mr. FOLK. Do you refuse to give any answer other than the answer, under advice of counsel?

Mr. JONES. I do refuse to give any other answer than that; yes, sir.

Mr. FOLK. You refuse to say that you decline to answer on the ground that the answer might incriminate you?

Mr. JONES. I refuse to give any answer other than that I have just given, to wit, that I decline to answer, upon advice of counsel.

Mr. FOLK. I will ask you, Mr. Jones, do you know of any campaign funds being expended by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in the State of Alabama through any attorney under a subterfuge of paying the attorney a bill for professional service?

Mr. JOUETT. We object to that question, and give the witness the same advice.

Chairman MEYER. The same ruling on the part of the commission.

Mr. JONES. And the same answer on the part of the witness.

Mr. FOLK. Mr. Jouett, in order that the record may be clear, do you give the witness advice of counsel not to answer as counsel for the Louisville & Nashville Railroad, or counsel for the witness?

Mr. STONE. Both.

Mr. JOUETT. Both.

Mr. FOLK. Both?

Mr. JOUETT. Yes.

Mr. FOLK. So in giving him that advice you act as his counsel as well as counsel for the Louisville & Nashville Railroad?

Mr. **Jones**. Yes.

Mr. **Folk**. Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Alabama for political purposes and charged upon the books of the carrier to operating expenses?

Mr. **Jouett**. Without knowing anything about it, I object to that question on the same ground heretofore mentioned, and give the same advice to the witness.

Chairman **Meyer**. The same ruling.

Mr. **Jones**. The witness makes the same answer.

Mr. **Folk**. You refuse to answer that question on advice of counsel, Mr. Jones?

Mr. **Jones**. Yes, sir.

Mr. **Folk**. I will ask you if you know of any funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway expended in the State of Alabama for political purposes and charged on the books of these carriers or on the books of either carrier to construction?

Mr. **Jouett**. We make the same objection to that question and give the same advice to the witness.

Chairman **Meyer**. And the same ruling.

Mr. **Jones**. And the witness declines to answer on the advice of counsel.

Mr. **Folk**. You refuse to answer that question on the advice of counsel?

Mr. **Jones**. Yes, sir.

Mr. **Folk**. I will ask you, Mr. Jones, if you have any knowledge of funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway used for political campaign purposes in the State of Tennessee?

Mr. **Jouett**. We make the same objection to that and give the same advice to the witness.

Chairman **Meyer**. The same instruction.

Mr. **Jones**. The witness declines to answer, under advice of counsel.

Mr. **Folk**. You refuse to answer that question on the advice of counsel?

Mr. **Jones**. Yes, sir.

Mr. **Folk**. Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Tennessee for political campaign purposes and charged on the books of that carrier to operating expenses or construction account?

Mr. **Jouett**. We make the same objection to that question and give the same advice to the witness.

Chairman **Meyer**. And the same ruling.

Mr. **Jones**. The witness declines to answer, on the advice of counsel.

Mr. **Folk**. You refuse to answer on the advice of counsel?

Mr. **Jones**. Yes, sir.

Mr. **Folk**. You can stand aside for the present, Mr. Jones. We will see you later.

(Witness excused.)

N. F. THOMPSON was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. Your full name?

Mr. THOMPSON. Newman F. Thompson.

Mr. FOLK. Where do you live?

Mr. THOMPSON. Birmingham.

Mr. FOLK. Alabama?

Mr. THOMPSON. Alabama.

Mr. FOLK. What is your occupation?

Mr. THOMPSON. I am in the milk business there in Birmingham.

Mr. FOLK. Milk?

Mr. THOMPSON. Yes, sir.

Mr. FOLK. Were you the president of the Alabama Land Congress?

Mr. THOMPSON. No, sir.

Mr. FOLK. Were you connected in any way with the Alabama Land Congress?

Mr. THOMPSON. No, sir.

Mr. FOLK. Do you know another N. F. Thompson down there?

Mr. THOMPSON. Yes, sir.

Mr. FOLK. You may stand aside for the present, Mr. Thompson. (Witness excused.)

R. D. PUSEY was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your full name?

Mr. PUSEY. R. D. Pusey.

Mr. FOLK. Where do you live?

Mr. PUSEY. Louisville.

Mr. FOLK. What is your occupation?

Mr. PUSEY. General passenger agent of the Louisville & Nashville Railroad.

Mr. FOLK. I show you here traffic agreements between the general passenger agents of the Louisville & Nashville Railroad Co.——

Mr. COLSTON. I object, your honor, to the denomination of these as traffic agreements. The governor can state that they are letters or that they are correspondence, if they be correspondence; but I object to the statement that they are traffic agreements.

Mr. FOLK. We will call them documents, if that is more agreeable. Documents in relation to the traffic arrangements between the Louisville & Nashville Railroad Co. and the Western Railway of Alabama.

Mr. COLSTON. I object to the entitlement as documents relating to an arrangement between the companies.

Chairman MEYER. Will you suggest a title, please? Perhaps we can save time in that way.

Mr. COLSTON. I have no objection to the statement that they are documents relating to business of a certain kind, but I object to any statement of a document being an arrangement or an agreement between the companies.

Mr. FOLK. You see the papers before you, do you not [handing papers]? Please explain what those papers are.

Chairman MEYER. Have you not some designation for the identification of these papers?

Mr. COLSTON. I have no objection. I think what the governor desires to put into the record is a statement of those matters which were referred to in the report to the commission relating to the route of the Western Railway of Alabama beyond Montgomery—beyond Montgomery and Selma—and I have no objection whatever to reading in the two letters, one an announcement by the general passenger agent of the Louisville & Nashville Railroad Co. and the other an announcement by the general passenger agent of the Western Railway, and saying that those are letters which they wrote and announcements which they made.

Mr. FOLK. They closed the Western Railway by agreement with the Louisville & Nashville Railroad in order to force the traffic over the Louisville & Nashville Railroad; and counsel, according to these papers, advised that that would be a violation of law, that they might accomplish the same thing through correspondence as they could by contract: and according to those papers this road was closed and the traffic was diverted to the Louisville & Nashville Railroad. Is that correct?

Mr. COLSTON. May it please your honor, I object to the counsel drawing deductions from this and asking the witness what his deduction is from the papers. Now, we have produced these papers in response to a subpœna duces tecum, and they are here, and we do not deny the papers, but we do object to having counsel draw a conclusion from those papers and asking the witness if the conclusion is right. Counsel can produce the papers in any way he sees fit.

Mr. FOLK. With that word of explanation I have given, I will ask the witness to read the documents before him in relation to this matter.

Mr. PUSEY. Do you want me to read these letters?

Mr. FOLK. And state what you know about it as you go along. Read the papers first.

Mr. PUSEY. Do you mean read them aloud?

Mr. FOLK. Yes.

Mr. PUSEY (reading):

DECEMBER 1, 1902.

Mr. J. P. BILLUPS,
G. P. A., A. & W. P. R. R., Atlanta, Ga.

DEAR SIR: Effective the 5th day——

Mr. STONE. You have some good readers over on your side. Let them read it.

Mr. FOLK. We have.

Mr. PUSEY. I thank you.

Mr. FOLK. Mr. Doherty, will you read them?

Mr. DOHERTY (reading):

DECEMBER 1, 1902.

Mr. J. P. BILLUPS,
G. P. A., A. & W. P. R. R., Atlanta, Ga.

DEAR SIR: Effective the 5th day of December, 1902, the Louisville & Nashville Railroad Co. will require local rates on business over its line from Akron, Ala., and from points west thereof, via Birmingham or Calera, as the case may be, to Montgomery and to points east, west, and south thereof, and it will also require local rates on any tickets that may be sold over its line from Atlanta to Montgomery or to points south and west of said city, via Birmingham or Calera, and it will withdraw from sale at Montgomery all tickets over its line to Akron or points west thereof via Birmingham or Calera.

In regard to passenger business controlled by your line, originating at Atlanta or Montgomery, or at points on your line between Atlanta and Montgomery, and ticketed via the Louisville & Nashville Railroad Co. to Mobile, I beg to say that the Louisville & Nashville Railroad Co. will pay your line 5 per cent of the revenue received by the Louisville & Nashville Railroad Co. on such business; and in regard to passenger business controlled by your line, originating at Atlanta or Montgomery, or at points on your line between Atlanta and Montgomery, and ticketed to New Orleans or points west of New Orleans, or to Shreveport and points west of Shreveport, via the Louisville & Nashville Railroad, I beg to say that the Louisville & Nashville Railroad Co. will pay your line 12½ per cent of the revenue received by the Louisville & Nashville Railroad Co. on such business, and the Louisville & Nashville Railroad Co. will also pay your line 12½ per cent of the revenue received by it on all tickets sold by it at Montgomery to Texas points and Shreveport, La.

I will further say that the agents of the Louisville & Nashville Railroad Co. will cooperate with the through line from Atlanta to points west of New Orleans and Shreveport, La., via Montgomery.

The Louisville & Nashville Railroad Co. will render statement each month showing the percentage due your line on the above-mentioned business and will promptly pay such amounts as may be due. The agents of this company will be required to act in accordance with the announcements made above.

I wish it understood that the foregoing regulations impose no obligations on the Louisville & Nashville Railroad Co. in favor of your line or anyone else, but are subject to change at the pleasure of this company.

Yours, truly,

G. P. A.

ATLANTA, GA., *December 23, 1902.*

Mr. C. L. STONE,
G. P. A., L. & N. R. R., Louisville, Ky.

DEAR SIR: I beg to notify you on behalf of the Atlanta & West Point Railroad Co. and the Western Railway of Alabama that all passenger business controlled by our line which originates in Atlanta or Montgomery, or at points on our line between Atlanta and Montgomery, destined to Mobile or New Orleans, or to points west of New Orleans, or to Shreveport or points west thereof, will be ticketed over the line of the Louisville & Nashville Railroad Co. from Montgomery, and our line will require our connections beyond Atlanta and Montgomery, and intermediate points, to discontinue the sale of tickets to the points above mentioned over our line west of Montgomery, and to forward passengers destined to points in the territory mentioned above over your line.

The above regulation is purely voluntary on the part of this line and is subject to change without liability to your company or any other party.

Yours, truly,

J. P. BILLUPS,
General Passenger Agent.

225925

JANUARY 16, 1905.

Mr. C. B. COMPTON, *Traffic Manager.*

DEAR SIR: Confirming our conversation, I recommend termination of arrangement with the A. & W. P. R. R. and the Western Railway of Alabama, under which we pay those companies 5 per cent of our company's proportion from points on their lines to Mobile and 12½ per cent of its proportion on tickets to New Orleans and beyond, including tickets of its own issue sold at Montgomery.

Our company will continue to require local rates on tickets which may be sold at Atlanta, also at Akron and points west of there, to Montgomery and beyond, via Birmingham or Calera, and will not restore to sale at Montgomery tickets to Akron and points west thereof via Calera or via Birmingham.

On the other hand, we assume that the Western Railway of Alabama will not reopen its line west of Montgomery for business to Mobile, New Orleans, and beyond, nor to Shreveport and points west of there.

Our company will continue to cooperate with the through line from Atlanta via Montgomery for business to points west of New Orleans and Shreveport.

The contract, which, under advice from our attorneys, was superseded by an individual announcement of our policy with respect to the traffic described above, provided that 60 days' notice should be given by either party of its desire to terminate the agreement, and I suggest that the same advance notice of our intention to discontinue paying percentage of our company's revenue to the A. & W. P. R. R. and the Western Railway of Alabama shall be given or that the notice be made effective March 31.

Yours, truly,

G. P. A.

NOVEMBER 8, 1910.

Mr. J. A. HIGGINS,
A. G. P. A., West Point Route, Atlanta, Ga.

DEAR JOE: Kindly give me the date or the text of the division understanding relative to prorating arrangement between the L. & N. and the West Point route on Selma business.

We have the question up now with our auditor and I am unable to produce what is wanted from our file. I will appreciate it very much if you will let me hear from you as early as you conveniently can.

I am extremely sorry that you did not get to the Chattanooga meeting.

Yours, truly.

Chairman MEYER. How do you wish the reporter to mark that?

Mr. FOLK. Exhibit 1.

Mr. COLSTON. You do not expect to offer the originals of our files, do you?

Mr. FOLK. Do you want it?

Mr. COLSTON. Yes; we want our files intact.

Mr. DOHERTY (reading):

Mr. J. P. BILLUPS, Esq.,
General Passenger Agent, Atlanta, Ga.

DEAR SIR: Effective the 1st day of December, 1902, the Louisville & Nashville Railroad Co.—

Mr. COLSTON. Is not that a copy of what has been read? It just happens to come from another file.

Mr. DOHERTY. Yes; I do not think there is any necessity to read that. [Reading:]

JANUARY 21, 1905.

Mr. C. A. WICKERSHAM, *Pres. & G. M.,*
A. & W. P. and Western Ry. of Alabama, Atlanta, Ga.

DEAR SIR: Please refer to correspondence between your general passenger agent and ours relative to request of the Seaboard Air Line for representation via Birmingham in rate sheets at Atlanta and other points at the time of the opening up of their line between Atlanta and Birmingham, the general passenger agent of that line having asked if we would not join him in applying the short-line rates from Atlanta to Nashville, Pensacola, Mobile, Gulfport, and New Orleans. Our Mr. Stone stated to your Mr. Billups that he thought we ought to allow the Seaboard Air Line the privilege of ticketing via Birmingham and the L. & N. The latter replied, referring to "Memorandum between our respective companies, which explains the omission of routings to Pensacola, Mobile, Gulfport, and New Orleans from Atlanta, via Birmingham, and in view of same I trust to receive copy of your advice to Mr. Ryan of your inability to acquiesce in his request."

As you are aware, agreement was entered into March 1, 1889, between the Western Railway Co. of Alabama and the Atlanta & West Point Railroad Co., party of the first part, and the Louisville & Nashville Railroad Co., party of the second part, in accordance with which the party of the first part agreed "that all passenger business controlled by it, originating in Atlanta and Montgomery, and at points on its line between Atlanta and Montgomery, destined to Mobile and New Orleans, and points west of New Orleans, also to Shreveport and points west thereof, shall be ticketed over the line of the party of the second part from Montgomery. The party of the first part further agrees to require its connections beyond Atlanta and Montgomery and intermediate points, to discontinue the sale of tickets to the points above mentioned over its line west of Montgomery, and to forward passengers destined to points in the territory mentioned above over the line of the party of the second part."

In consideration of the faithful compliance by the party of the first part with the foregoing provisions, the party of the second part agreed to "require local rates on business from Akron and west thereof via Birmingham or Calera, as the case may be, to Montgomery and points east, west, and south thereof; that it will also require local rates on any tickets that may be sold from Atlanta to Montgomery, or to points south and west of said city via Birmingham or Calera; and, further, that it will withdraw from sale at Montgomery all tickets to Akron or points west thereof via Calera or via Birmingham."

In reviewing sundry traffic department contracts in 1902, our general solicitor advised that the above contract seemed to be in restraint of trade and commerce, and suggested that the same object could be accomplished by individual announcement. Accordingly, on December 1, 1902, our general passenger agent wrote your Mr. Billups, advising what we would do, his announcement being practically what we agreed to in contract; and your Mr. Billups replied, on December 23, 1902, announcing what your company would do, his announcement being substantially the same as the provisions of the contract. These communications constitute the memorandum to which your Mr. Billups refers in his letter to Mr. Stone of January 6, this year.

The contract provided for cancellation on 60 days' notice. Mr. Stone's letter of December 1, 1902, provides in last paragraph:

"I wish it understood that the foregoing regulations impose no obligation on the Louisville & Nashville Railroad Co. in favor of your line or anyone else, but are subject to change at the pleasure of this company."

Your Mr. Billups's letter, dated December 23, 1902, closes with the words:

"The above regulation is purely voluntary on the part of this line and is subject to change without liability to your company or any other party."

So that at this time the situation is such that either the A. & W. P. and the Western Railway of Alabama or the Louisville & Nashville Railroad Co. may terminate at pleasure the arrangement, or understanding, under which we have been working in connection with the passenger business covered by the foregoing.

There is no desire whatever, however, on our part to take any such action, but we do feel that the time has come when our interests require a modification of the arrangement outlined above, and to this modification we would like to have your consent. It is that we comply with the request of the Seaboard Air Line to give that company representation in rate sheets at Atlanta and other points at the time of the opening of their line between Atlanta and Birmingham and join that company in applying the short-line rates from Atlanta to Mobile, Gulfport, and New Orleans. They ask that we apply short-line rate to Nashville via Birmingham. We would not favor this proposition, neither would we concur in proposition to apply the short-line rate to Montgomery via Birmingham, if such proposition should be made, and it would not be our purpose to apply it to Pensacola. In other words, we would only apply it where competition might force us to.

The through-car line between Atlanta and New Orleans is well established. Very little, if any, inroad could be made in its business by our complying with the request of the Seaboard Air Line. That line, however, is going to work for and secure some business between Atlanta and Mobile, Gulfport, and New Orleans. They will endeavor to secure their haul between Atlanta and Birmingham on as much of this business as possible. The short-line rates are already in effect between the points mentioned via the Southern Railway and its connections, and our participating in them in connection with the Seaboard Air Line would, for the most part, make inroads into the business now handled by the Southern Railway and its connections and not into that handled over the strong line via Montgomery. It would practically be taking away business from the Southern Railway without hurting your line or ours via Montgomery. Under these conditions, what are you going to gain, or what are we going to gain by our declining to comply with the Seaboard Air Line's request? The route between Atlanta and Mobile, Gulfport, and New Orleans via Birmingham could not successfully compete with the present well-established through line between those points via your line, Montgomery, and ours. There would be no through cars via the Birmingham route; the business would be brought to Birmingham by the Seaboard Air Line, picked up by us at that point, and, in the opposite direction, be carried to Birmingham by us and picked up by the Seaboard Air Line. It would be an undesirable route and one which passengers would not be likely to favor.

Still, they would secure some business even on basis of the regular rates. The rate between Atlanta and New Orleans via Birmingham, for instance, would be $15.50, only 65 cents in excess of the short-line rate, and if business were tendered us on basis of this rate we, as a common carrier, could not decline to accept it. It is doubtful if much more business would move on basis of the short-line rates than if the regular rates should govern, on account of the undesirability of the route, and I, therefore, trust that after looking into matter you will conclude that you can consistently consent to this modification of the arrangement under which we are working.

I shall be glad to hear from you at your early convenience.

——— ———,
Third Vice President.

(Copy to Mr. M. H. Smith, president.)

[On letterhead of Atlanta & West Point Railroad Co.]

A—11807.

ATLANTA, GA., *January 31, 1905.*

Mr. WM. J. DICKINSON,
Third Vice President, Louisville & Nashville Railroad Co.,
Louisville, Ky.

DEAR SIR: Referring to your favor January 21, relative to request of the Seaboard Air Line Railway for representation via Birmingham in connection with your line:

Any modification of the memorandum or voluntary agreement between your company and ours, as sought for, and if concurred in, would, in our opinion, materially jeopardize our interests to a much greater extent than you perhaps have anticipated.

It seems to us that it is somewhat unreasonable, if not indeed inconsistent, for your company to ask our consent to a modification that would authorize the application of certain short-line fares from Atlanta to Gulf coast points via Birmingham, when to a point which involves interests of the N., C. & St. L. you do not favor the proposition of applying short line Atlanta-Nashville rate via Birmingham, which practically yields for your line Birmingham to Nashville the same rate per mile as would obtain Montgomery to Pensacola and Mobile, were the short-line rates from Atlanta to these points made applicable via Birmingham and Montgomery.

Admitting that the through car line between Atlanta and New Orleans is well established, consequent service and improvement of schedules via other routes (which usually develops) would have a tendency to remove, in a degree, the prestige so long enjoyed by the old and established line, which ultimately would be the result when, by aggressive solicitation and judicious advertising, the new line to Mobile, Pensacola, and New Orleans via Birmingham and Montgomery would in a short time become universally known and naturally attract some business that had been wont to move via Atlanta and Montgomery, all of which it is proper to assume as being an inroad to our interests.

It is not to be doubted that the S. A. L. Ry. intends working for business between Atlanta and the points in question via their new line, but without your cooperation they can not successfully, in our opinion, advertise and solicit business via a route offering no connections at their terminus. The question therefore resolves itself into what will be your policy in this respect if the route in question is authorized. The natural conclusion is, the S. A. L. Ry. not being able to work with the Q. & C., which we have assurance will be the case, will seek to establish service making close connection with your company, attracting a certain class of travel which does not care about being on the road a few hours longer.

The effect of the representation asked by the S. A. L. Ry. would place the Southern Railway on the same parity and authorize them to solicit business to the points mentioned either via Birmingham and Meridian, Birmingham and Montgomery, and Atlanta and Montgomery. You can readily appreciate that diverse routes, with their many avenues of travel, is calculated to divert business from one or more lines.

When the S. A. L. Ry. completed their line into Atlanta some years ago they were not considered, in the true sense, a competitor for eastern business, on account of their inferior schedules and connections; time, however, served to demonstrate their potency and activity in the field, and they have proven that to-day they are the most formidable competitor of the Southern Railway on eastern business. It is the future, with its many developments, some of which may now seem to be remote, which we must consider.

I fail to note any reference by you in your letter as to the policy of your company with respect to accepting through equipment from the S. A. L. Ry. at Birmingham, which I am satisfied will be tendered from time to time, and particularly for movement to New Orleans, where so many conventions are held. Oyster shuckers and theatrical business are not to be lost sight of, and should your company signify a willingness to accept through equipment the S. A. L. Ry. would then become an important factor in the solicitation of this and other business, which would warrant their soliciting with a guaranty of through movement. This tends further to prove that a diversion of traffic from the present through car line will ensue.

There are other considerations which the subject imposes, and one in particular is United States Government business between Atlanta and Pensacola and Atlanta and New Orleans, the present cash fares being Atlanta to Pensacola, $7.68; Atlanta to New Orleans, $12.65. The application of fares via Birmingham and Montgomery (by reason of land grant) would make the fares: Atlanta to Pensacola, $7.04, and Atlanta to New Orleans, $12.26, a reduction of 64 cents in the case of the former and 39 cents in the latter.

The N. O. & N. E., through their general passenger agent, has repeatedly renewed their request on us for the application of rates from Montgomery and points east on our line to Shreveport via Selma and Meridian, which under our "memorandum" or voluntary understanding we have not assented to.

I am somewhat at a loss to understand why you are so zealous to concur in the S. A. L. Ry. proposition when you have heretofore denied the Southern Railway the privilege of ticketing business via Birmingham and Montgomery.

The Southeastern Passenger Association, I learn, is in receipt of a request from Hon. Joseph B. Babb, secretary of the Commercial Club, Birmingham, for stop-over privileges in his city in all tickets, which if voted upon favorably would in itself be quite an incentive for the diversion of travel via a city whose commercial enterprises and mining industries is attracting the attention of investors and tourists, who naturally, with the opportunities afforded by stop-over privileges, would travel via the route offering such inducements.

As you are well aware, the Southern Railway does not solicit business from Atlanta to New Orleans, nor do they advertise it in any way from Atlanta. Passengers making inquiry at their office are informed that the Southern has no through service, and refer them to our line. Should your line exhibit the least disposition to grant the S. A. L. Ry. a privilege not heretofore enjoyed by the Southern Railway, would it not be reasonable to infer that they would not sit idly by and make no effort to compete? This would give them an opportunity to solicit in connection with both lines through Birmingham, and make them an active competitor against both our line and yours. The S. A. L. Ry. can hope for no help from the Q. & C., and we can not see where the L. & N. would be benefited; on the contrary, should you participate with the S. A. L. Ry., it would create more competition for your line and ours.

We feel that we should continue to make every effort to maintain our present position entirely unchanged, offering no encouragement to the line to Birmingham in the slightest manner. To do otherwise, I am sure, would be to weaken our line, with practically no benefit to yours, the advantage being solely in favor of the S. A. L. Ry. I have reason to believe that should our present position be maintained, the attitude of the Southern Railway, in all probability, will remain the same; but if your line, as previously stated, should participate in short-line rates, you simply make two competitors for yourself—certainly to your own detriment, as well as ours. We practically enjoy all of the business from this territory, and such being the case, what advantage would you enjoy by dividing it?

Our respective lines, as you know, are very closely related, and I think that we should, as far as possible, work to the interest of each other; and am glad to say that I believe this policy is being carried out to a greater extent than ever before.

After giving the entire matter the most careful thought, and endeavoring to consider its every phase, I am forced to the opinion that it would not be wise to make a change that would in the slightest manner have a tendency to weaken the strong position which our respective lines now occupy, and which is of great mutual benefit to us both.

I will be very glad to hear from you further on the subject.

Yours, truly,

(Signed) C. A. WICKERSHAM,
President and General Manager.

Mr. FOLK. To save time reading these others, will you consent that they be placed in the record and considered as read?

Mr. STONE. No; we would rather you would read them.

Mr. JOUETT. You had better read them all.

Mr. DOHERTY. I started to read that other one, and they said it was not necessary.

Mr. FOLK. You do not waive the reading?

Mr. STONE. No.

Mr. COLSTON. Read them all.

Mr. JOUETT. As part of them have been read, they had better be complete.

Mr. DOHERTY (reading):

[Louisville & Nashville Railroad Co., office of the general passenger agent. R. D. Pusey, general passenger agent. Milton Smith, assistant general passenger agent. C. J. Lieber, assistant general passenger agent.]

LOUISVILLE, KY., *September 1, 1914.*

Mr. W. A. Russell,
Passenger Traffic Manager.

DEAR SIR: Attached I hand you my entire file 281544, relating to arrangement for payment to the West Point route and the Western of Alabama of percentage on revenue accruing from tickets sold by that company to Mobile and New Orleans and certain points beyond, also on business ticketed by our company from Montgomery to certain destinations.

I have marked in the file a letter to Mr. Billups, under date of December 1, 1902, which outlines the existing arrangement. Also letter from General Passenger Agent Stone to Mr. Compton on January 16, 1905, recommending same be discontinued. There is also attached to the file a statement from Mr. Becker showing that under this arrangement we paid to those companies for the fiscal year ended June 30, 1914, a total of $6,666.74.

While I do not suppose there are any tickets sold from Montgomery to New Orleans via Selma and Meridian, yet the short-line fare applies via that route, as is also with the New Orleans-Atlanta fare.

My file contains no information as to the negotiations leading up to this arrangement, but as this arrangement appears to have been made prior to the date of the agreement relating to the operation of trains Nos. 37 and 38 and Washington-Sunset tourist car, so long as existing conditions continue as relating to the through-car line, the only point where we could possibly be at a disadvantage is at Montgomery proper. In view of our superior service, it would not appear that the West Point route could hurt us to any extent. As no reply was ever made to Mr. Stone's letter of January 16, 1905, I am bringing this matter to your attention that you may give consideration to the canceling of the arrangement. I might add in this connection that I had no knowledge until within the last few days of the existence of this agreement.

Yours, truly,

R. D. PUSEY,
General Passenger Agent.

SEPTEMBER 4, 1914.

Mr. RUSSELL:

I must confess that this thing looks to me like pure graft. Even were it justified in 1883, it is not justified at this late date. My idea would be to withdraw from it. If the West Point route undertakes to compete via Selma to Mobile and New Orleans, with improved service for the purpose, we will try to

see what we can accomplish in connection with the Southern Railway at Atlanta, Macon, etc., and with the Seaboard Air Line at Atlanta.

As a matter of fact, does not the Sunset-route arrangement cover all that it is necessary to have taken care of at this time?

A. R. S.

SEPTEMBER 1, 1915.

DEAR JOE: Can you give me any information with respect to the matter we discussed in Chicago?

Yours, truly,

———— ————.

To Mr. J. A. HIGGINS,
A. G. P. A., A. & W. P. Ry., Atlanta, Ga.

[Letterhead of Atlanta & West Point Railroad Co.; the Western Railway of Alabama.]

ATLANTA, GA., *September 6, 1915.*

MY DEAR MR. RUSSELL: Referring to yours 1st instant: The question of arrangements discussed in Chicago is now up with our executive officer and we hope to be able to advise something definite at an early date.

With regards and best wishes, I am,

Yours, sincerely,

J. A. HIGGINS.

Mr. W. A. RUSSELL,
P. T. M., L. & N R. R., Louisville, Ky.

Personal.

SEPTEMBER 21, 1915.

Mr. J. P. BILLUPS,
G. P. A., A. & W. P. Ry., Atlanta, Ga.

DEAR SIR: Please refer to our conversation some months ago when I last saw you in Atlanta and to my conversation with Mr. Higgins in Chicago at the time of the Southeastern Association meeting, and advise me what is being done with reference to the subject matter of those conversations.

As I explained to you at the time, our third vice president did not believe the arrangement should be continued, and as I told Mr. Higgins, Mr. Smith has recently inquired from me what was being done with reference to the matter. Not having heard from you, I am unable to advise him.

Yours, very truly,

———— ————,
Passenger Traffic Manager.

(Dictated.)

Personal.

NOVEMBER 1, 1915.

Mr. J. P. BILLUPS,
G. P. A., A. & W. P. Ry., Atlanta, Ga.

DEAR SIR: Referring to my conversations with yourself and Mr. Higgins, my recent letter to you, and our talk with Mr. Smith in New York.

Can you not, without further delay, give me some information with respect to the attitude of your company in the matter we discussed?

Yours, very truly,

———— ————,
Passenger Traffic Manager.

[Letterhead of Atlanta & West Point Railroad Co.; The Western Railway of Alabama.]

ATLANTA, GA., *February 1, 1916.*

Personal:

Mr. W. A. RUSSELL,
P. T. M., L. & N. Railroad Co., Louisville, Ky.

DEAR SIR: I will advise you fully in the next day or so regarding the matter we discussed in Atlanta on your last visit.

Yours truly,

J. P. BILLUPS,
General Passenger Agent.

JPB-T.

Mr. Folk. Your letter of September 1, 1914, addressed to W. A. Russell, passenger traffic manager of the Western Railway, reads in part as follows: "While I do not suppose there are any tickets sold from Montgomery to New Orleans via Selma and Meridian, yet the short-line fare applies via that route, as is also with the New Orleans-Atlanta fare," does it not? Why is it that tickets are not sold via Montgomery and Selma to New Orleans?

Mr. Pusey. Why?

Mr. Folk. Yes.

Mr. Pusey. Because nobody would buy them.

Mr. Folk. Why not?

Mr. Pusey. No service.

Mr. Folk. No service? Why is there no service?

Mr. Pusey. Because the demand for tickets via such a route would not be sufficient to justify service.

Mr. Folk. Why did you have to make an agreement of this kind, then, to suppress one of these roads and divert the traffic via the L. & N.?

Mr. Pusey. Personally I do not know why the agreement was made. It was made long before I had any knowledge of conditions in that territory.

Mr. Folk. Is it not a fact that agents east of Montgomery on the A. & W. P. and Western Railway of Alabama were instructed to route their through passengers via Montgomery and the Louisville & Nashville Railroad?

Mr. Pusey. I think they were.

Mr. Folk. Are they not now?

Mr. Pusey. I do not think so.

Mr. Folk. Why not?

Mr. Pusey. Because, if they ever were instructed, it has been so many years ago I do not think they have any knowledge of any such arrangement. The service via the other route is such that naturally the public would seek that route, and they would have no occasion and no request for tickets through Selma.

Mr. Folk. Well, this road was closed under this agreement to traffic so as to divert the traffic to the L. & N., was it not?

Mr. Pusey. I do not know that it was closed; no. I could not say that. There are traffic arrangements whenever through-train service is offered. Naturally the lines interested in through-train service will endeavor to route the business via the route of the through-train service. That is a universal practice, and it is only in that way that any lines could offer to the public the through-train service they do offer, is by supporting that service, to make it profitable and justify it.

Mr. Folk. You do not agree, then, with the general counsel, according to the statement read, that that agreement would be unlawful?

Mr. Colston. May it please your honor, I submit that is not a proper question to ask the witness. This witness is not a lawyer, and whether he agrees with the general solicitor or counsel is a matter of no moment whatever in this investigation.

Chairman Meyer. I think I shall have to support you in that on the basis of suggestions made at last evening's session.

Mr. **Folk**. It is not a usual thing for a line to close in order to give its traffic to another line, is it?

Mr. **Pusey**. I would not, speaking to this case, call it closing, because, as I view it, and that must be from conditions in the past six or eight years, it is the natural logical route, the route over which the business would naturally move, over which the public would want to move, and the public would close the route, if for no other reason, because business could not be routed, even if the carriers attempted to.

Mr. **Folk**. You think that agreement was unnecessary, then, do you?

Mr. **Pusey**. I do, so far as I can see.

Mr. **Folk**. Why did the Louisville & Nashville Railroad pay a good many thousand dollars under that agreement to get the line closed so as to get the traffic?

Mr. **Pusey**. I do not know. I can only refer you to my memorandum of September 1, 1914, which expresses that I could not see any reason why we should continue.

Mr. **Folk**. That is all.

Cross-examination:

Mr. **Colston**. Mr. Pusey, have you a copy of the commission's rules for the publication of passenger tariffs convenient?

Mr. **Pusey**. I have not.

Mr. **Colston**. Have you gentlemen a copy of the commission's rules for the publication of passenger tariffs?

Mr. **Folk**. No.

Mr. **Colston**. Well, you can answer this from memory, possibly. It is true, is it not, that among the things which the commission requires shall be shown by a passenger tariff filed with the commission in accordance with section 6 of the act to regulate commerce, is a statement of the carriers participating in the rate, and a statement of the route via which those rates apply; is not that true?

Mr. **Pusey**. That is true; yes, sir.

Mr. **Colston**. And it is contemplated throughout the regulation relating to the routing and ticketing and rating of passenger business, that carriers shall agree among themselves as to the routes via which rates and practices and regulations and train service apply; is not that true?

Mr. **Pusey**. That is correct.

Mr. **Colston**. And it is provided by the commission's circular, issued pursuant to and under the authority of section 6 of the act to regulate commerce, that it is not lawful to send passengers except in emergency via routes through which no rates have been published; is not that correct?

Mr. **Pusey**. That is correct.

Mr. **Colston**. Even though the route may be there and there may be a physical possibility of a service?

Mr. **Pusey**. That is right.

Mr. **Colston**. Now, as a matter of practice and reason, is there any other route that can reasonably compare with the route via the Western Railway of Alabama, the Atlanta & West Point, and the Louisville & Nashville Railroad from Atlanta to Mobile?

Mr. **Pusey**. There is not.

Mr. Colston. Would it not be almost absurd to consider the route via Selma as a competitor, in view of the service which is afforded by the other route?

Mr. Pusey. It would be, and I imagine if any tickets were sold, the passengers would kick up quite a disturbance.

Mr. Colston. You run between Atlanta and Mobile via the line of the West Point and the Louisville & Nashville Railroad fast trains which carry through sleepers from New Orleans to New York, do you not?

Mr. Pusey. We do.

Mr. Colston. And in the reverse direction?

Mr. Pusey. Yes.

Mr. Colston. You have a double daily service of those through trains, have you not?

Mr. Pusey. We have one train runs through solid, and another train that carries through sleepers.

Mr. Colston. Through sleepers solid on two trains and the whole train and coaches on the other?

Mr. Pusey. In other words, double daily through service.

Mr. Colston. Now, as a matter of fact, regardless of any technicality as to whether there was an agreement to close this route, but considering merely the question of whether the route was closed, is it not a fact that since 1910 rates have actually been published to New Orleans, Shreveport, and points west referred to in this agreement, via Selma, from Montgomery and from Atlanta?

Mr. Pusey. They have.

Mr. Colston. Now, is it not a fact that the route from those two gateways, that is, Montgomery and Atlanta, governs the route from points east of those gateways?

Mr. Pusey. It does; it governs it.

Mr. Colston. And therefore, is it not a fact that the Selma route is open for the sale of tickets from the territory east of Montgomery and Atlanta?

Mr. Pusey. It is, and it has been open since 1910. It may have been longer, but I am not sure.

Mr. Colston. Is it or is it not a fact that passenger fares are published from New Orleans and points west thereof and from Shreveport and points west thereof in the opposite direction to Montgomery, Atlanta, and to points east via Selma?

Mr. Pusey. Yes, sir.

Mr. Colston. And the passenger tariffs under which those rates are published provide for a route via Selma, do they not?

Mr. Pusey. Yes, sir.

Mr. Colston. And permit the public to travel, if they want to, via Selma?

Mr. Pusey. Yes, sir.

Mr. Colston. What is the case as to passenger fares from Montgomery to Akron and Jackson, Miss., and presumably to points in that territory via Birmingham; are they published or not?

Mr. Pusey. Fares are published via that route.

Mr. Colston. Is the rate to Akron via Birmingham a short-line rate?

Mr. Pusey. It is not.

Mr. COLSTON. Is that because of any agreement or understanding?

Mr. PUSEY. No.

Mr. COLSTON. What is the reason?

Mr. PUSEY. It is because of the distance and because of the ordinary method of constructing fares that is universally employed. Anyone looking at the map would see that naturally the fare from Montgomery to Akron, short line, should not apply via Birmingham. It does not take a traffic expert to determine that.

Mr. COLSTON. Would it be good business judgment to publish such a short-line rate via that route?

Mr. PUSEY. In my opinion it would be very bad business.

Mr. COLSTON. What about the service from Montgomery to Akron via Calera; is that a good route?

Mr. PUSEY. It is not.

Mr. COLSTON. Or a desirable route?

Mr. PUSEY. The line from Calera to Akron is undesirable because of the changes——

Mr. COLSTON. When I say desirable, I mean undesirable or desirable from the point of view of the public, not from the railroads'. Is it desirable from the point of view of the public?

Mr. PUSEY. It is not.

Mr. COLSTON. How long has it been, approximately, since the Louisville & Nashville Railroad or its officials decided that there was no reason to continue any longer these arrangements under which you allowed excess proportions to the Western Railway of Alabama?

Mr. PUSEY. About a year and a half ago it was first taken up.

Mr. COLSTON. Have you, pursuant to the negotiations which are indicated in the correspondence read by counsel for the Government, done anything with respect to discontinuing these payments or these arrangements?

Mr. PUSEY. They have been discontinued.

Mr. COLSTON. Effective on what date were they discontinued?

Mr. PUSEY. Effective with January, 1916, ticket sales.

Mr. COLSTON. Is it correct to say that after conducting these negotiations and conferences with reference to discontinuing them, which are indicated in the letters which have been read into this record, you have actually discontinued them of your own motion?

Mr. PUSEY. We have.

Mr. COLSTON. That is all.

(Witness excused.)

Mr. FOLK. Is Mr. George W. Jones here?

(No response.)

Mr. FOLK. Mr. A. R. Smith.

Mr. COLSTON. Mr. Commissioner, before we start with a new witness, would it not be well to have Mr. Carleton? It is getting pretty late, and if we keep on putting it off we will not reach him.

Mr. FOLK. This investigation will last two or three weeks, and you will have abundant opportunity to interrogate Mr. Carleton.

A. R. SMITH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your full name?

Mr. SMITH. Addison R. Smith.

Mr. FOLK. What is your occupation?

Mr. SMITH. Third vice president, Louisville & Nashville Railroad Co.

Mr. FOLK. Where do you live?

Mr. SMITH. Louisville.

Mr. FOLK. Did you ever hear of the Alabama State Land Congress?

Mr. SMITH. Yes; I think I have.

Mr. FOLK. What was the purpose of the Alabama State Land Congress, do you know?

Mr. SMITH. My recollection of a talk with the president of that organization was that he expected to instill in the agricultural interests of Alabama a better idea of farming.

Mr. FOLK. It was ostensibly for the purpose of aiding the agricultural resources of Alabama.

Mr. JOUETT. We object to that "ostensibly." You can ask the witness what the purpose was, if he knows, but this is his witness, and he can not ask him if it was ostensibly for a certain purpose.

Mr. FOLK. I can ask the question.

Mr. JOUETT. And I object to it. It is an improper question and draws an improper inference.

Mr. FOLK. I submit that the questions these gentlemen have been asking for some time would not warrant making such an objection to this innocent little question.

Mr. JOUETT. We were just trying to follow you a little bit on yesterday's question, and that does not make this right.

Mr. SMITH. My understanding was that it was for the promotion of farming interests.

Mr. FOLK. I show you a letter addressed to Mr. G. A. Park, general immigration and industrial agent, signed by yourself, dated March 1, 1913, and will ask whether or not you can identify that as a copy of an original letter written by yourself.

Mr. JOUETT. Gov. Folk, he says that he identifies it—did you say you identified the letter?

Mr. FOLK. Do you?

Mr. SMITH. I do.

Mr. JOUETT. If you offer that in evidence, we desire to object to it.

Mr. FOLK. I will read it [reading]:

MARCH 1, 1913.

Mr. G. A. PARK,
General Immigration and Industrial Agent.

DEAR SIR: There has been organized the Alabama State land congress for the purpose of advertising the agricultural resources of Alabama * * *.

The organization is in its infancy, and while quite a number of prominent Alabamians have taken hold and presumably will do their part in a material way toward an energetic advertising campaign, it now needs some money for initial purposes.

At an interview this morning President N. F. Thompson had with our president and me, Mr. Smith agreed that the L. & N. Railroad should do its share, making a subscription not exceeding $1,200 during the next three months. As first payment, please arrange to issue a voucher payable to "The Alabama State land congress, N. F. Thompson, president, Birmingham, Ala.," for $500. President Thompson will call on you for further amounts should they be needed. Charge traffic expenses, item 83, distributed as between our Alabama lines, except the N. & D. and N. O. & M. divisions.

Yours, truly,

——— ———.
Third Vice President.

(Copy not signed.)

Mr. JOUETT. Do you offer that in evidence?

Mr. FOLK. We do.

Mr. JOUETT. We object to the introduction of that letter in evidence for the reasons heretofore stated, as it comes within the advertising, and we desire to explain to your honor that we should have objected and requested the witness not to answer anything in regard to the letter, but he answered it before we could make that objection. It is not particularly material in itself, but I wish to make that statement so that your honor can see we are following the same consistent position.

Chairman MEYER. I shall have to rule that the letter shall be admitted.

(The letter so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 1, Witness Smith, received in evidence April 29, 1916," and the same is attached hereto.)

Mr. FOLK. I show you a letter addressed to you, signed by N. F. Thompson, president——

Mr. JOUETT. Suppose you read the letters in your question.

Mr. FOLK. I will read them all [reading]:

DEAR SIR: * * * I note very marked increase in the "development" matter in all the daily papers, and corresponding absence of political. This is precisely what I am trying to bring about. * * *

Yours, truly,

N. F. THOMPSON, *President.*

APRIL 23, 1913.

ADDISON R. SMITH, *Third Vice President,*
Louisville & Nashville Railroad, Louisville, Ky.

MY DEAR SIR: * * * I am greatly encouraged at the marked change that is being exhibited all over the State in favor of "business" and "development," and while Mr. Comer has been actively canvassing in those places which he has considered his strongholds, he has not yet aroused such interest as to lead him to formally declare himself a candidate, and if he should do so, I believe he will be gloriously "licked * * *."

Sincerely, yours,

N. F. THOMPSON, *President.*

Mr. JOUETT. Now, as bearing upon both the political situation and the advertising situation, I object to that question, and advise the witness, who is the third vice president of the Louisville & Nashville Railroad Co., not to answer the question.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. Under advice of counsel, I decline to answer.

Mr. **Folk** (reading):

Birmingham, Ala., *May 22, 1913.*

Addison R. Smith,
Vice President Louisville & Nashville Railroad,
Louisville, Ky.

Dear Mr. Smith: * * * Now, to announce that every railroad, i. e., the five large systems (L. & N., The Southern, Seaboard, I. C., and Frisco), were coming to Alabama to consult with the landowners, and go over with them plans for a general move for white farmers here, would have the most far-reaching benefit in every way, and could not be turned to any political disadvantage whatever. It would be without question the best method of defeating Comer, but I will see that it is kept clear of politics, and the railroads will be infinitely the gainers.

It will be worth all you can do to help bring this about, so I request that you write a letter to the presidents of the roads named and plainly state to them what is desired, and I will do the rest. Just sit steady in the boat, and you will [word evidently omitted] one B. B. Comer licked to a frazzle, and all this railroad agitation would come to a speedy end in Alabama.

Sincerely, yours,

N. F. Thompson, *President.*

Mr. **Jouett**. What is your question about that? Are you going to read them all first?

Mr. **Folk**. Yes.

Mr. **Jouett**. All right.

Mr. **Folk** (reading):

Birmingham, Ala., *May 24, 1913.*

Mr. G. A. Parks,
G. I. & I. Agt., L. & N. R. R.,
Louisville, Ky.

Dear Mr. Park: Can you obtain for the Alabama Land Congress an additional subscription of $300? * * *

It is simply to meet a present emergency, and the Louisville & Nashville will feel my influence in their favor before this political campaign closes. * * *

Sincerely,

N. F. Thompson.

(R. R. to Mr. A. R. Smith, favorbaly recommended. (Signed) G. A. P. 5/26.)

(R. R. to Mr. M. H. Smith, for instructions. (Sgd.) A. R. S. 5/26.)

(A. R. S. Do as you deem best. (Signed) M. H. S. May 27, 1913.)

August 2, 1913.

Mr. Pusey: * * * The movement represented by the Alabama State Land Congress will result in inestimable benefit to the Alabama carriers; it has other value at this time, which it is unnecessary to mention; suffice it to say that I believe the executive officers (presidents or vice presidents) of the respective Alabama lines have information on the subject

A. R. S.

Birmingham, Ala., *November 7, 1913.*

Mr. M. H. Smith,
President L. & N. R. R.,
Louisville, Ky.

My Dear Sir: * * * I shall make it more clear that Alabama can not hope to advance as it should until the people stop the agitation against railroads by the politicians. * * *

Yours, truly,

N. F. Thompson,
Secretary and General Manager.

MAY 29, 1913.

Mr. W. W. FINLEY,
President, Sou. Ry., A. G. S. R. R., M. & O. R. R., Washington, D. C.
Mr. W. J. HARAHAN,
President, S. A. L. Ry., Norfolk, Va.
Mr. C. H. MARKHAM,
President, I. C. R. R., C. of G. Ry., Chicago, Ill.
Mr. B. L. WINCHELL,
President, Frisco Lines, St. Louis, Mo.
Mr. C. A. WICKERSHAM, *President,*
A. & W. P. R. R., W. Ry. of Ala., Atlanta, Ga.
Mr. T. M. EMERSON, *President,*
A. C. L. R. R., Wilmington, N. C.

GENTLEMEN: * * * I have felt that the movement, aside from the good resulting from the direct accomplishment of its purposes would, due to the cementing of the interests and the efforts of all classes of citizens, cause a more friendly feeling toward corporations in general and railroads in particular, and in addition might be the means of diverting the minds of farmers and others from demagogic politics, although it has been the effort of the officers of the congress to keep their organization clear of politics. Hence, I have been aiding the president, Col. N. F. Thompson, in various ways in furthering the objects of the congress. * * *

I hope that you can find it proper to say to President Thompson that you will arrange to attend the next congress.

Yours, very truly,

M. H. SMITH, *President.*

All of the letters I have read you, except the last one, were either signed by you or addressed to you, and the last one is signed by M. H. Smith, president, but is in your files.

I ask you with respect to all but the last whether or not you can identify the copies as I have read them as copies in part of letters either written to you or written by you, and as to the last letter I will ask you if you did not cause this letter, which was signed by President Smith, to be written and for his signature.

Mr. JOUETT. For the reasons heretofore stated we object to that question and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. And by advice of counsel I decline to answer.

Mr. FOLK. Now, Mr. Smith, here is an organization calling itself the Alabama State Land Congress, ostensibly formed to aid farmers. I ask you if, in reality, that organization did not represent the Louisville & Nashville Railroad Co., and if it was not formed for the purpose of creating public sentiment in favor of the Louisville & Nashville Railroad?

Mr. JOUETT. We object to that question and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. Under advice of counsel, I decline to answer.

Mr. FOLK. Can you tell me how many thousands of dollars of the Louisville & Nashville Railroad Co.'s funds were expended through the Alabama State Land Congress in this effort to create sentiment in Alabama in favor of the Louisville & Nashville Railroad?

Mr. JOUETT. I do not know that any thousands of dollars were spent, but for the reasons heretofore stated, we object to the question and advise the witness not to answer.

Chairman MEYER. The same ruling.

Mr. SMITH. Under advice of counsel, I decline to answer.

Mr. FOLK. So this land congress, supposed to be composed of farmers in Alabama, really had behind it the great Louisville & Nashville Railroad Co., and was, in reality, formed to favor corporate interests, was it not?

Mr. JOUETT. We make the same objection and give the same advice to the witness.

Chairman MEYER. The same ruling.

Mr. SMITH. On advice of counsel, I decline to answer.

Mr. FOLK. Do you think it is fair to either the people of a great State like Alabama in that way to deceive them into thinking that an organization represents merely the farmers of the State, when in truth it represents a powerful railroad like the Louisville & Nashville Railroad?

Mr. JOUETT. I object to the inferences and argument of counsel in framing the question, and also I object to the question on the other grounds and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. On advice of counsel, I decline to answer.

Mr. FOLK. Have you any knowledge of a fund of $37,500, made up of Louisville & Nashville Railroad Co. money, expended in Alabama in what is known as an effort to get rid of certain questions in relation to taxation?

Mr. JOUETT. We object to that question and instruct the witness to decline to answer it. Could you give the date and make any reference to make it a little clearer?

Mr. FOLK. Yes; I will give you the date in a moment and will give you full reference to the voucher.

Mr. STONE. The same advice.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. On advice of counsel, I decline to answer.

Mr. FOLK. I will ask you, Mr. Smith, whether you know of your own knowledge of large amounts of money of the Louisville & Nashville Railroad being used for political campaign purposes in the State of Alabama.

Mr. JOUETT. We make the same objection, and advise the witness not to answer.

Chairman MEYER. The same ruling.

Mr. SMITH. On advice of counsel I decline to answer.

Mr. FOLK. I ask you, Mr. Smith, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad used for political campaign purposes in the State of Tennessee and charged on the books of the carrier to operating expenses or to construction account?

Mr. JOUETT. We make the same objection, and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. On advice of counsel I decline to answer.

Mr. FOLK. I ask you if you know of your own knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or to operating expenses?

Mr. JOUETT. We make the same objection, and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. **Smith.** On advice of counsel I decline to answer.

Mr. **Folk.** I ask you, Mr. Smith, whether you have any knowledge of the effect of the relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway resulting from the joint ownership in restricting competition or establishing a monopoly in any of the territories served by either carrier?

Mr. **Jouett.** With reference to that question, we object to it upon the ground that it is likewise incompetent and immaterial, and that the commission has no jurisdiction over that question, which, if anything, will be a question relating to the antitrust act. But without waiving our right to object to other matters—anything else that may arise—we will not give any instructions to the witness not to answer.

(The witness here consults with Mr. Jouett.)

(The question was then read as above recorded.)

Mr. **Jouett.** I think it is fair to the witness to state that neither he nor any of the officials of the railroad company were advised about what they would be asked, and it is possible he may have to ask for opportunity to investigate some records and documents or something to refresh his recollection about this before it is over. I do not know whether he is prepared to answer offhand as broad a question as that or not.

Mr. **Smith.** I do not.

Mr. **Folk.** I show you a letter signed by yourself dated August 18, 1906, addressed to J. H. Ellis, secretary, in relation to the division of territory between the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co., and ask you to examine that copy and state whether or not you can identify it as a copy of an original letter that you wrote.

Mr. **Jouett.** We have not been called upon for the original of this letter or any of these letters, and I think if you are going into correspondence now about this matter, we ought to have a list of the letters you wish, so we can produce them and compare them with these. These may be, and probably are, correct; but there may be other notations, and there may be other things upon the letters that may be of value. I think the proper way and certainly the regular way would be to call on us first by notice for the original letters before you could offer the secondary evidence.

Mr. **Folk.** That is a copy of a letter in the files of the carrier, made by an examiner.

Mr. **Jouett.** That is what you say.

Mr. **Folk.** If we had to call for copies here, it would be unnecessary to send examiners into the office of the carriers.

Mr. **Jouett.** Oh, no.

Mr. **Folk.** And the copies we would have to call for would fill this room. You have the original of this letter.

Mr. **Jouett.** I say that going into the carrier's records for your examination is not to produce them here, but to know what is in them, and you can call on us for them and on our failure to produce them, you can produce secondary evidence. Certainly this is not competent when there has been no notice to us to produce the original. I do not know that this is material with respect to this letter, but that is certainly the practice, unless the commissioner feels that the copies made by the examiners are competent evidence.

Chairman **Meyer**. With respect to the correspondence relating to passes for the year 1913, Mr. Jouett, I made a ruling because of the question raised in that particular form, and in that particular connection, with reference to the subpœna, for instance.

Mr. **Jouett**. Yes.

Chairman **Meyer**. Now, in this case I think I will have to rule that the copies may be admitted. You are in the possession of the originals and can make corrections if they should not be correct.

Mr. **Colston**. Your honor has probably not considered the nature of the question. The question is not as to whether the copy shall be admitted as testified to by the examiner who claims to have made that copy from the records of the carrier, as the pass copies admitted were made and were introduced. In the case of the pass copies the introduction was regular only because we had been subpœnaed to bring the originals here; and, while saving our objection as to the other matters, we waived the mere objection to the introduction of copies. Now in this case there is no examiner put on the stand to show that he introduces them. The governor does not propose to rely upon the evidence of the examiner as to what is there, but the governor, in effect, asks of this witness an impossibility. He asks this witness to take a letter concerning which he has no notice and to state whether that letter is or is not an accurate copy of a letter in his files. Now, the objection is to the form of proving that letter. There is a way of proving these things which is not only legal but logical.

Chairman **Meyer**. I think with reference to the first point, as I understand it, that if there is no one here to testify to the correctness of the copy the examiner should be put on the stand and should testify as to these copies.

Mr. **Folk**. We have no objection to proving them all in that way, but this letter was written by this very witness.

Mr. **Jouett**. But it was written 10 years ago, and you ask him to look at a letter 10 years old, when he has not had an opportunity to have his mind refreshed about it, and ask him whether it is a true copy. We assume it is——

Mr. **Folk**. If the witness says he has any doubt about it we will produce the examiner.

Mr. **Jouett**. We can not say; but he is entitled to compare it with the original and is entitled to have the original introduced.

Mr. **Folk**. I will have the examiner identify it right here. Mr Carleton, take the stand.

W. H. **Carleton** was recalled as a witness, and, having been previously duly sworn, testified further, as follows:

Mr. **Folk**. I show you report 394B, containing miscellaneous statements and copies of contracts and correspondence, and containing a particular letter purporting to be signed by A. R. Smith, third vice president, addressed to Mr. J. H. Ellis, secretary, dated Louisville, Ky., August 18, 1906, and ask you whether or not you made a copy of this particular letter and of the various letters and documents set out in this report No. 394B from the records of the Louisville & Nashville Railroad Co.?

Mr. **Carleton**. I had it made by our stenographer.

Mr. **Jouett**. The question is whether you made it?

Mr. **Carleton**. No, sir; I did not.

Mr. **Folk.** Was it made under your direction?

Mr. **Carleton.** It was made under my direction and typewritten. I saw the originals.

Mr. **Jouett.** Did you see it when the copy was made?

Mr. **Folk.** You saw the original?

Mr. **Carleton.** Yes.

Mr. **Jouett.** But did you see this copy when it was made?

Mr. **Carleton.** I can not state I was present at the time.

Mr. **Jouett.** Did you compare it with the original?

Mr. **Carleton.** I can not say that I personally compared that particular copy or not, but——

Mr. **Jouett.** Could you compare it in any other way except personally?

Mr. **Carleton.** I could have had it compared by our stenographer.

Mr. **Jouett.** That would depend entirely on what somebody else told you then, would it not? That would be two degrees of hearsay. You can not swear that that is a correct copy of the letter at all, can you? Have you any personal knowledge about it?

Mr. **Carleton.** Not as compared with the original myself, any more than I can testify to any of the work that has been done by the examiners under my direction.

Mr. **Jouett.** But we are now considering some letters in which the language of the letter and all may be of importance. You do not undertake to say that you had any personal knowledge as to whether that is or is not a correct copy?

Mr. **Folk.** What is that book?

Mr. **Carleton.** That book is the supporting paper, Appendix B to my report to the Interstate Commerce Commission.

Mr. **Jouett.** But our query is confined to that letter and not the book. The letter itself you do not pretend to say you know anything personally of, is not that true?

Mr. **Carleton.** Yes; I know that it has been prepared under my direction in the offices of the Louisville & Nashville Railroad from the original in the file.

Mr. **Jouett.** How do you know that?

Mr. **Carleton.** Because I instructed a stenographer to make it.

Mr. **Jouett.** You told somebody to do it, and he told you he did it, is not that all?

Mr. **Carleton.** Certainly; he did all of that work.

Mr. **Jouett.** I am not asking about anything else, but about this letter. You simply told him to make a copy and he told you he did, and you do not know anything more?

Chairman **Meyer.** I shall have to rule with respect to this letter which the examiner of the commission states is, to the best of his knowledge and belief, a correct copy, that that letter may be admitted subject to check and correction by the carrier.

Mr. **Jouett.** The only thing is that he has not said that that is a copy, except from hearsay: and it looks like he is going to say something right now, and Gov. Folk was about to ask him something further. We are willing to hear his statement.

Mr. **Folk.** I do not think it is necessary, after the ruling. However, Mr. Carleton actually did compare this letter himself, did you not?

Mr. Carleton. Not that, but the one I have right here.

Mr. Jouett. We do not think that helps the case, but if the commissioner thinks otherwise, we have no disposition to argue further about it.

Mr. A. R. Smith was recalled as a witness, and having been previously duly sworn, testified further as follows:

Mr. Colston. I think the chairman misunderstood the point that I was trying to make, and possibly it was due to the fact that I did not make myself clear and use the proper expression, and that is this: We have not objected to the fact that an examiner may introduce any compilation that has been made by him or under his direction in testimony or in evidence given by him, but my objection was as to the logical and legal impossibility of demanding that this witness, who did not make this copy, and under whose direction the copy was not made—my objection was to the unreasonableness of expecting this witness to look at that letter and say whether or not it was a copy of a letter which is in Louisville without being afforded an opportunity to compare it.

Chairman Meyer. Then I may say that my ruling did not go to that point, but I rule that a letter copied by an examiner of the commission, or under his direction and certified to as a correct copy, should be admitted subject to check by the carrier.

Mr. Jouett. Well, he is reading it now.

Mr. Folk (reading):

[(Stamped:) L. & N. R. R. Co., secretary's office, Aug. 20, 1906, Louisville, Ky.]

Louisville, Ky., *August 18, 1906.*

Mr. J. H. Ellis, *Secretary.*

Dear Sir: I am handing you herewith for safe keeping the originals of

"Memorandum of understanding with respect to the solicitation and routing of freight traffic from points in Kentucky and Tennessee, and from points on and north of the Ohio River and on and west of the Mississippi River to the South,"

and

"Memorandum of understanding with respect to the solicitation of traffic by the L. & N. R. R. and by the N., C. & St. L. Ry. to Nashville and to the territory on and north of the Ohio River and on and west of the Mississippi River,"

both dated April 26, 1906.

Also the original letter, signed by Mr. H. F. Smith, dated July 12, 1906 (file 12475–A) relating to the ink notation on first page of the first-mentioned memorandum.

Also copy of formal notice of this date, addressed to the vice president of the N., C. & St. L. Ry., making effective in their entirety both of these memoranda.

While arrangements of this general character would ordinarily be kept in correspondence files, these are, notwithstanding, of such importance that I would prefer they be placed where they can always be preserved and readily gotten at.

Yours, truly.

A. R. Smith,
Third Vice President.

(Copy of original "Memorandum of understanding" on file in the office of the secretary of the Louisville & Nashville Railroad Co.——

Mr. Stone. Are you asking a question on that copy?

Mr. Folk. No, sir; as copy of original memorandum of understanding. I understood Mr. Jouett to say we could just put the whole thing in.

Mr. STONE. All right; not put it in, but just ask the question. We do not consent.

Mr. JOUETT. We do not consent to it being offered in evidence. I thought you were going to read it and then ask the question.

Mr. FOLK. This letter sends this contract, and that is part of the letter.

Mr. JOUETT. He would probably know that contract. I do not know whether he can identify it or not.

Mr. FOLK. Can you identify this contract as a contract for the division of territory between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway?

Mr. SMITH. Without undertaking to check it through, I believe it to be a copy of a memorandum of understanding with respect to the consolidation of routing of freight traffic from points in Kentucky to points on and north of the Ohio River and points on and west of the Mississippi River to the south.

Mr. FOLK. I offer this contract the witness has just identified in evidence, and will ask you to make it Exhibit 1 to your testimony.

Mr. JOUETT. We object to it as incompetent in itself, and also as being beyond the jurisdiction of the commission upon the original grounds stated.

Chairman MEYER. You are objecting?

Mr. JOUETT. I am objecting because it comes within the antitrust feature of the investigation, which is beyond the jurisdiction of the commission.

Chairman MEYER. It is on file with the commission, is it not?

Mr. JOUETT. Yes. I am just saving that question with reference to this hearing.

Chairman MEYER. I shall have to rule it may be admitted.

Mr. JOUETT. Yes; I understand, and may we not understand with reference to any of this evidence relating to the first 11 paragraphs of the investigation that we save a formal objection to it all or make a formal objection to it all, because of want of jurisdiction in the commission to consider that particular feature; and we understand your honor overrules that objection? May that be considered as done without making it each time?

Mr. FOLK. It is not necessary to make it each time, but if you now announce your objection you can make it a blanket objection, if you should so desire.

Mr. JOUETT. Of course, we also want to understand that our not instructing the witness to answer with reference to these 11 paragraphs does not affect or waive any right we have with reference to objecting to any others, if we have any such right.

Mr. FOLK. We do not want any understanding at all.

Mr. JOUETT. Well, we will just make that other objection at the proper time, then.

(The document so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 1, Witness Smith, received in evidence April 29, 1916," and the same is attached hereto.)

Mr. FOLK. I show you here a memorandum of understanding with respect to the consolidation of traffic by the Louisville & Nashville

Railroad Co. and Nashville, Chattanooga & St. Louis Railway Co. to Nashville and to the territory on and north of the Ohio River and on and west of the Mississippi River and ask you if you can identify that as a copy of the contract for a division of territory?

Mr. **Smith**. Without undertaking to check, I believe this to be a copy of such memorandum of understanding.

Mr. **Folk**. I offer the "Memorandum of understanding," which has just been identified by the witness, as an exhibit.

Mr. **Jouett**. We make the same objection.

Examiner **Meyer**. It will be received.

(The document so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 2, Witness Smith, received in evidence April 29, 1916," and the same is attached hereto.)

Mr. **Folk**. I show you a letter addressed to you by H. F. Smith, vice president of the Nashville, Chattanooga & St. Louis Railway Co. under date July 12, 1906, in relation to this contract and ask you if you can identify that as a copy of the letter received by you.

Mr. **Smith**. This letter is dated virtually 10 years ago, and I have not at this time a recollection of it.

Mr. **Folk**. We present Mr. Carleton to identify the letter again.

Mr. **Smith**. Just outside of the record, you understand that I really think that that is the letter, because I recall the subject, but I really could not say whether it is or not.

Mr. **Folk**. So far as you know, it is a copy of the letter?

Mr. **Smith**. Just change the answer. Being nearly 10 years ago, I can not positively identify it, but, recalling generally the particular subject discussed, I believe it probably is from my files.

Mr. **Folk** (reading):

[Nashville, Chattanooga & St. Louis Railway. Office of H. F. Smith, vice president and traffic manager.]

12475 A.

NASHVILLE, TENN., *July 12, 1906.*

Mr. A. R. SMITH,
Third Vice President, Louisville, Ky.

DEAR SIR: I have yours of the 26th ultimo, file 51505, on matter of routing business to and from Columbia, Tenn.

Have you overlooked my letter of May 5, in which I stated, "Note that you are awaiting instructions from President M. H. Smith. We will cheerfully be governed by his advice with respect to the matter."

In yours of May 8, you state, "Our president writes me, under date of May 7, as follows:

"I think your position is correct, and that the management of the N., C. & St. L. should accede."

This correspondence justifies my statement to you June 25, reading, "Having conceded to your line between Nashville and Columbia all business to and from the Ohio River and the West, including our local stations west of Nashville."

Will anticipate further reply to mine of 25th ult.

Yours, truly,

I. F. SMITH,
Vice President and Traffic Manager.

(Rubber stamp signature.)

Mr. **Folk**. I show you a letter of date August 18, 1906, signed by yourself, and will ask you if you can identify that as a reply written to the letter I have just read?

Mr. **Smith**. The same character of answer.

Mr. **Folk** (reading):

[Louisville & Nashville Railroad Co. Traffic department. Office of the third vice president. Addison R. Smith, third vice president.]

Louisville, Ky., *August 18, 1906.*
51505

Mr. H. F. Smith,
Vice President N., C. & St. L. Ry., Nashville, Tenn.

Dear Sir: With regard to the routing and solicitation arrangements made some months ago between the N., C. & St. L. Ry. and the L. & N R. R., certain provisions of said arrangements were suspended by consent on your part.

I beg now to advise that all of our arrangements having been about completed, we will, effective September 1, 1906, discontinue the handling, via Nashville, of freight between Atlanta and points tributary to the Atlanta gateway and certain other points in that general territory, on the one hand, and Cincinnati and points tributary to that gateway, as well as certain territory south of Cincinnati, on the other, and will commence the use entirely of the route through Knoxville.

I shall be pleased if you will take cognizance of this notice and extend proper directions to your agents, to be effective September 1, and also give like notice to the various connections of the N., C. & St. L. Ry., who are concerned therein.

Please acknowledge receipt.

Yours, truly,

A. R. Smith,
Third Vice President.

(Original signed by ——.)

Mr. **Folk**. I will ask you if you know the relations of the Louisville & Nashville Railroad Co. and the Atlantic Coast Line.

Mr. **Smith**. The financial relations?

Mr. **Folk**. No; the relations. The Atlantic Coast line owns the majority of stock in the Louisville & Nashville Railroad Co., does it not?

Mr. **Smith**. I understand the Atlantic Coast Line Co. of Connecticut does.

Mr. **Folk**. Owns the majority of stock in the Louisville & Nashville Railroad Co.?

Mr. **Smith**. That is my understanding.

Mr. **Folk**. Do you know anything about the Gulf Transit Co.?

Mr. **Smith**. The what?

Mr. **Folk**. The Gulf Transit Co.

Mr. **Smith**. Yes; generally.

Mr. **Folk**. That is a corporation with a capital stock of some $82,000, all owned by the Louisville & Nashville Railroad Co.?

Mr. **Smith**. I would not say that positively, about the amount of the stock, but it is my understanding the Louisville & Nashville Railroad Co. owns the company.

Mr. **Folk**. What do you know about the Pensacola Trading Co.?

Mr. **Smith**. About the same thing, except that the Louisville & Nashville Railroad Co. does not own it. That is from general information.

Mr. **Folk**. That is owned by the Gulf Transit Co., is it not?

Mr. **Smith**. No, sir; not according to my information.

Mr. **Folk**. The Louisville & Nashville Railroad Co. owns the Gulf Transit Co. and the Gulf Transit Co. owns the Pensacola Trading Co.?

Mr. SMITH. I understand the Pensacola Trading Co. is owned by C. C. Mengel Bros. Co., of Louisville.

Mr. FOLK. That sale to these gentlemen was made recently, was it not?

Mr. SMITH. I think it was made last year or about.

Mr. FOLK. Yes; up to this year——

Mr. SMITH. About this time last year.

Mr. FOLK. The Gulf Transit Co. owned the Pensacola Trading Co., did it not?

Mr. SMITH. I believe so; prior to that time.

Mr. FOLK. And the Pensacola Trading Co. purchased the steamer *August Belmont* from the Gulf Transit Co.?

Mr. SMITH. I could not answer the question.

Mr. FOLK. You do not know anything about that?

Mr. SMITH. I do not know where they procured it. The *Belmont* was owned by the trading company, I believe, before I came to the Louisville & Nashville Co. I might add——

Mr. FOLK. The Louisville & Nashville Railroad Co. owned the Gulf Transit Co., and the Gulf Transit Co., until last year, owned the Pensacola Trading Co.; and the Pensacola Trading Co. owned the steamer *August Belmont?*

Mr. SMITH. According to my understanding.

Mr. FOLK. And the Louisville & Nashville Railroad Co., through the Gulf Transit Co. and the Pensacola Trading Co., owned the steamer *Belmont*. Do you know under what flag the *August Belmont* sailed?

Mr. SMITH. British, I think.

Mr. FOLK. Why did it sail under the British flag? Why not sail under the Stars and Stripes?

Mr. SMITH. I have no knowledge of the affairs of the trading company, and I could not answer that.

Mr. FOLK. But the Louisville & Nashville Railroad Co. owned the *August Belmont;* and there was another steamer called the *Saltmarsh*, was there not?

Mr. SMITH. Yes.

Mr. JOUETT. You mean it did own it?

Mr. FOLK. Yes; up to last year.

Mr. SMITH. I may say I have no jurisdiction or very rarely come in contact with the affairs of the Pensacola Trading Co.

Mr. FOLK. Can you tell us what flag the *Saltmarsh* sailed under?

Mr. JOUETT. We object to that. It is certainly immaterial to this issue.

Mr. FOLK. I think it is of some consequence, as a part of the history of the Louisville & Nashville Railroad.

Mr. SMITH. My understanding is that the *Saltmarsh* also sailed under the British flag.

Mr. FOLK. Now, as vice president of the Louisville & Nashville Railroad Co., can you tell us why these steamers owned and controlled by the Louisville & Nashville Railroad Co. sailed under the British flag instead of under the American flag?

Mr. SMITH. I explained that I do not know, Governor.

Mr. FOLK. Do you know who does know, that is connected with the Louisville & Nashville Railroad?

Mr. SMITH. I should think that the best posted person would be Mr. E. O. Saltmarsh.

Mr. FOLK. How about Mr. Milton Smith; would he know?

Mr. SMITH. I could not say, but I doubt it.

Mr. FOLK. Now, do you know of any traffic contract between the Atlantic Coast Line and the Louisville & Nashville Railroad Co. of the same character as the traffic contract between the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. SMITH. No, sir.

Mr. FOLK. Do you know of any arrangement for division of territory between the Louisville & Nashville Railroad Co. and the Southern?

Mr. SMITH. I do not.

Mr. FOLK. You do not know?

Mr. SMITH. No.

Mr. FOLK. Who would know?

Mr. SMITH. I should know if there was anyone with the company.

Mr. FOLK. Would Mr. Milton H. Smith know?

Mr. SMITH. I would not say that positively, but I believe he would.

Mr. JOUETT. You might state what department of the company you preside over.

Mr. SMITH. I am in executive charge of the several branches of the traffic department, and for that reason were there such a contract I would, of course, be cognizant of it.

Mr. FOLK. Is there any understanding reflected in the rates filed by these carriers as to a division of territory?

Mr. SMITH. As between the Southern and the Louisville & Nashville Railroad Co.?

Mr. FOLK. Yes.

Mr. SMITH. No; the Southern Railway is the most active competitor at every point, I think, that we have.

Mr. FOLK. How long has the Southern been an active competitor of the Louisville & Nashville Railroad Co.?

Mr. SMITH. So far as I know, since 1905, when——

Mr. FOLK. Since 1905?

Mr. SMITH. When I came to the company.

Mr. FOLK. Do you know how it was, say, for instance, in 1896?

Mr. SMITH. I was connected with the Southern Railway for five years, until the end of 1903, and during that time also.

Mr. FOLK. Is Mr. Milton Smith here?

Mr. JOUETT. No; he has just left for his daughter's about 10 or 15 minutes ago. You told me you were going to adjourn at half past 6, and we assumed you would not use him.

(Witness excused.)

J. B. HARLAN was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

Mr. FOLK. What is your full name?

Mr. HARLAN. John B. Harlan.

Mr. FOLK. What is your occupation?

Mr. HARLAN. Chief special agent of the Louisville & Nashville Railroad.

Mr. FOLK. Where do you live?

Mr. HARLAN. La Grange, Ky.

Mr. FOLK. How long have you been connected with the Louisville & Nashville Railroad?

Mr. HARLAN. Twenty-four years.

Mr. FOLK. According to the records in the office of the Louisville & Nashville Railroad, during the period embraced within the years 1906 to 1914 you expended $156,242.70 of the funds of the Louisville & Nashville Railroad. Can you state what that money was expended for?

Mr. JOUETT. If your honor please, we can not conceive under what possible heading of this investigation this inquiry would be competent. Your honor knows, of course, that every railroad has a special-agency department, and there is no claim and can be no claim that this man had anything to do with any of the matters that are referred to in these 13 paragraphs. Your honor can readily see how disastrous it would be if this man were required to state publicly his expenditures. I am willing to say this to the commissioner and to Gov. Folk: We are perfectly willing to produce to you or to him for examination every single receipt showing expenditure of every dollar of that money. That money is spent each month by his check, and the men whom he employs render a bill at the end of the month, and he pays them and takes their receipts, and those receipts are then taken to the general manager's office and checked up, and he is given a voucher for that work. We are perfectly willing to present to you gentlemen every one of those receipts, but we think it is utterly incompetent here. I have no doubt that these examiners have seen the vouchers and know all the facts about it. But we do insist that it would be a gross injustice and a most useless thing——

Mr. FOLK. I will state, Mr. Jouett, that the examiners were denied the vouchers and refused all information.

Mr. JOUETT. Perhaps they were, on account of the secret nature of it. But I will say now, we are willing to submit them to you, gentlemen, and if you think there is anything worth investigating, it can be taken up later. But just because the commission has power to extract evidence, I am sure is no reason, and I am sure there is no desire on the part of the chairman, to do a useless injury, and I do not believe that Gov. Folk can show where it would be in anywise competent. But we waive all those matters and say we are perfectly willing to exhibit to either one of you gentlemen all those receipts.

Mr. FOLK. Will you read the question?

(The question was then read as above recorded.)

Mr. JOUETT. Now, to state what that money was expended for is simply to state in the lump sum matters that could then be gotten in the details, but it is not proper that we should be required to state what it is in the lump sum. We can show it. The public is not interested in it, and you can well see how it would work an unnecessary injury to the carriers to have confidential matters of that sort disclosed, and I am sure there was never any intention on the part of Congress or of the commission to do that, unless there is some reason shown for it. There is no reason shown; there is no pretext that it was any improper expenditure or that it in anywise relates to the

13 paragraphs of this investigation, and certainly just simply to ask the special agent at the head of the special agent's department to say what he has been spending his money for is wholly irrelevant and improper.

Mr. **Folk.** It is always relevant to ascertain what has been done with the funds of a public-service carrier, and I think the question is entirely competent. However, if Mr. Jouett will present us with the vouchers——

Mr. **Jouett.** Yes, sir.

Mr. **Folk.** We will advise the chairman just what the question is and what the facts are, and the chairman, after consulting with his associates can determine whether or not it is desirable to make public these particular matters.

(Here an informal discussion ensued which the reporter was directed not to take.)

Mr. **Jouett.** As I understand the arrangement, then, the carrier will present to Gov. Folk and to the chairman for use by the full commission itself, and them only, all of these vouchers. I mean for the purpose of examination. Col. Stone suggests that that word "use" may be a little broad, but——

Mr. **Stone.** We do not want them to go out of the general manager's possession.

Mr. **Jouett.** We understand it is for examination, to be returned finally.

Chairman **Meyer.** This, you realize, involves the question whether every item of expenditure by a carrier is subject to examination by the commission in a public record. You realize that the commission, acting under the act to regulate commerce, would be interested in the expenditure of all moneys by carriers. But the question you have raised, Mr. Jouett, is, so far as I know, a new one; and since you have expressed your willingness to make these vouchers and accounts in question available to every member of the commission, I feel that I should not rule at this time, at least, that the witness should answer. But I will submit that to my colleagues.

Mr. **Jouett.** All right.

Mr. **Stone.** Take it under advisement and confer with the other commissioners; is that it?

Chairman **Meyer.** That is the ruling, Col. Stone.

(Further informal discussion here ensued.)

Mr. **Jouett.** I understand that the commissioner has indicated he would resume this hearing at Washington, Thursday of next week, on condition that the defendants will make no question as to the jurisdiction, or, rather, that the defendants will give the Government the right to select either the district court in Tennessee or in Washington wherein to file their suit to compel the witnesses to answer.

Now, we have no objection to that, and will agree not to object to the jurisdiction in either of those courts.

Mr. **Folk.** In other words, you waive all questions relating to jurisdiction of the court in Washington or the court in Nashville?

Mr. **Jouett.** Yes, sir. I would like to make this suggestion before we close. As to that examination on Thursday, I would like to ask whether you expect us to have Mr. Smith present or do you wish to go on regularly? Because there may be other witnesses; I do not know, of course. I did not know about Mr. Jones and had not thought about it. There may be other witnesses who would be called afterwards who might be asked about these matters; but, of course, if we go right on to the courts, and postpone the next hearing until after the Supreme Court has decided the question, of course that would be all right; and one witness would be enough, if you wanted just Mr. Smith.

Chairman **Meyer**. With reference to that, the hearing for Thursday, May 4, will be for the purpose of inquiring of Mr. Milton H. Smith. If any other representatives of the carriers are desired as witnesses, chief counsel will advise you in advance.

Mr. **Jouett**. That will be all right.

Chairman **Meyer**. And the chief counsel may wish at that time to call certain examiners of the commission. He does not know now whether or not that will be so; but if so, he would like to feel free to do that.

Mr. **Jouett**. That is all right.

Mr. **Folk**. I may desire to examine other witnesses; and if so, will notify you; that is, I will notify you as to what officers of the carrier we may need.

Mr. **Keeble**. I understand, Mr. Chairman, that you will not go generally into the other matters or the pass question.

Chairman **Meyer**. Just a moment. I was about to state that the hearing next Thursday may be regarded as a special hearing for these rather special purposes, and that on the 23d of May, at 10 o'clock in the morning, we will proceed with the general investigation. After conference with my colleagues I will announce the place. The date I announce now.

Mr. **Stone**. That is, going on with the hearing regularly?

Chairman **Meyer**. On the 23d; yes, sir; and unless notice to the contrary is given by the commission, on the 23d we will proceed with this general investigation, the place to be announced later.

Mr. **Stone**. And if the governor desires to have any other witnesses, either on the 4th or the 23d, he will notify them or have them subpœnaed?

Mr. **Folk**. Yes.

Chairman **Meyer**. That is understood.

Mr. **Folk**. But we reserve the right now to examine Mr. Milton H. Smith as to all of these matters.

Mr. **Stone**. Yes; and we can introduce any witnesses we choose at either hearing?

Mr. **Folk**. Well, after we finish our testimony. The case will not be completed then.

Mr. **Stone**. Of course we do not want you to yield the floor.

Mr. **Folk**. Before we close, you shall have a full opportunity to present your case.

Mr. **Colston**. Of course we will want to cross-examine Mr. Carleton, but I assume that will not take place until the 23d.

Chairman **Meyer**. The hearing, then, is adjourned until 10 o'clock, Thursday, May 4, at Washington.

Mr. **Colston**. I would like to be advised by counsel for the commission just what records they will require under the subpœna duces tecum for the pass records, if any, in order that I may not bring around a lot of unnecessary records around the country. I furnished a list of what we would be able to get up and what we could not get up to counsel for the commission on the first day in the form of an affidavit by Mr. Mapother, and in order to avoid boxing up unnecessary records, I will ask, if any records are desired, that a specification be made of just what will be required.

Chairman **MEYER.** May I suggest, Mr. Colston, that you take it up with chief counsel and that may be agreed upon outside of the record.

Mr. **COLSTON.** All right.

Mr. **JOUETT.** There seems to be a little misunderstanding. No one comes unless you summon them, in either case?

Chairman **MEYER.** For Thursday, May 4, it is understood that Mr. Milton H. Smith will be present.

Mr. **JOUETT.** And any others Gov. Folk asks for?

Mr. **FOLK.** Yes.

Chairman **MEYER.** And, as to others, you will summon whomever you wish?

Mr. **FOLK.** Yes.

Mr. **STONE.** When will you ask for them?

Mr. **FOLK.** We would expect to give you ample notice.

(Whereupon, at 6.55 p. m., an adjournment was taken until Thursday, May 4, 1916, at 10 a. m., at Washington, D. C.)

LOUISVILLE AND NASHVILLE RAILROAD CO.

THURSDAY, MAY 4, 1916.

WASHINGTON, D. C.

The hearing was resumed at 10 o'clock a. m. before Chairman Meyer.

APPEARANCES.

Mr. Joseph W. Folk, Mr. Philip J. Doherty, and Mr. Harry Hull on behalf of the Interstate Commerce Commission.

Mr. Henry L. Stone and Mr. Edward S. Jouett (Louisville, Ky.) on behalf of the respondent, Louisville & Nashville Railroad Co.

PROCEEDINGS.

MORTON H. SMITH was called as a witness, and being first duly sworn, testified as follows:

Mr. FOLK. Your name is Milton H. Smith?

Mr. SMITH. Yes, sir.

Mr. FOLK. You are the president of the Louisville & Nashville Railroad Co.?

Mr. SMITH. Yes, sir.

Mr. FOLK. You were born in the Catskill Mountains in New York?

Mr. SMITH. Yes, sir; Greene County, Windham Township.

Mr. FOLK. And you moved later to Alabama?

Mr. SMITH. I never lived in Alabama. I moved from Greene County, N. Y., to Chautauqua County, N. Y., when I was an infant, and then, when I was 14 years of age, I was taken to Cook County, Ill. In 1858 I went to Tennessee by way of St. Louis, stopping in St. Louis a few weeks, and I have lived in what is known as the South since, with the exception of three years that I lived in Baltimore.

Mr. FOLK. When did you first become connected with the Louisville & Nashville Railroad?

Mr. SMITH. In 1865.

Mr. FOLK. In the capacity of freight agent?

Mr. SMITH. Local freight agent; yes, sir; of the Louisville & Nashville Railroad.

Mr. FOLK. You became general freight agent of the Louisville & Nashville in 1868?

Mr. SMITH. In 1869, I think.

Mr. FOLK. And served as general freight agent for how long?

Mr. SMITH. Until 1878.

Mr. FOLK. Then you became general freight agent of the Baltimore & Ohio?

Mr. SMITH. Yes, sir.

Mr. FOLK. How long did you serve as general freight agent of the Baltimore & Ohio?

Mr. SMITH. About three years.

Mr. FOLK. Then you became general agent of the Pennsylvania Railroad Co.?

Mr. SMITH. At New York; yes, sir.

Mr. FOLK. And how long did you serve as general agent of the Pennsylvania?

Mr. SMITH. Three months.

Mr. FOLK. Then you became third vice president and traffic manager of the Louisville & Nashville?

Mr. SMITH. Yes, sir; in January, 1882.

Mr. FOLK. Then you became first vice president of the Louisville & Nashville?

Mr. SMITH. I think about 1882.

Mr. FOLK. And you served as first vice president from 1882 to 1884?

Mr. SMITH. Yes, sir.

Mr. FOLK. Then you became general manager of the Louisville & Nashville?

Mr. SMITH. I became president.

Mr. FOLK. You were president awhile and then vice president again?

Mr. SMITH. Yes, sir.

Mr. FOLK. And you were elected president the last time when? In 1891, was it not?

Mr. SMITH. Probably; yes. I do not recall the date exactly. As a matter of fact, I have been chief executive officer, with the title of vice president or president, since 1882.

Mr. FOLK. And you have served continuously as president of the Louisville & Nashville Railroad since 1891?

Mr. SMITH. Yes.

Mr. FOLK. I show you, Mr. Smith, a list of lines supposed to be controlled by stock ownership and operated by the Louisville & Nashville Railroad. I will ask you to state whether or not this is a correct list, and if it is a correct list, just read the list into the record.

Mr. SMITH. I can not, from memory, assert that this is absolutely correct. The correct list is given in the annual report of the Louisville & Nashville Railroad. I can check them from the last report. Presumably it is correct.

Mr. FOLK. Will you read these names into the record?

Mr. SMITH. Bay Minette & Fort Morgan Road, Goodlettsville & Greenbriar Road, Henderson Belt Road, Kentucky Highlands Road, Lewisburg & Northern Road, Lexington & Eastern Railway, Long Branch Coal Road, Louisville & Nashville Terminal Co., Maysville & Lexington Road, Northern Division, Maysville & Lexington Road, Southern Division—I think that is erroneous. I do not know of any such division or road.

Mr. FOLK. As the southern division?

Mr. SMITH. Not of the Maysville & Lexington; no. There is an error there, I think. There is what is called the Maysville Branch, running from Maysville, Ky., to Paris, Ky.

Mr. FOLK. Part of the Kentucky Central?

Mr. SMITH. It was acquired with and is a part of the Kentucky Central, yes, sir; but it was originally constructed as an independent road.

Morganfield & Atlanta Road, Nashville & Decatur Railroad, Owensboro & Nashville Railway, Pontchartrain Railroad, Southeast & St. Louis Railway, St. Louis & Southeastern Railway Consolidated, Stouts Mountain Railroad, Swan Creek Railway, Tuscaloosa Mineral Railroad, Wasiota & Black Mountain Railroad.

Mr. FOLK. Those are the roads controlled by stock ownership by the Louisville & Nashville and operated by the Louisville & Nashville Railroad?

Mr. SMITH. Now, let me see——

Mr. FOLK. You can make any correction later that you may desire on that.

Mr. SMITH. Just wait a moment. I want to see about that.

Mr. FOLK. All right.

Mr. SMITH. The roads that have been created by the Louisville & Nashville Railroad in most part.

Now, the first, Goodlettsville & Greenbriar Railroad, was a mere cut-off. We wanted to shorten the line, and under the laws of Tennessee we had to, or thought we had to, get a charter to get the power to condemn the properties for a right of way. It was more what you might call a makeshift, to get that power to acquire the right of way.

The Kentucky Highlands we bought.

The Lewisburg & Northern was another charter that we took out in Tennessee to secure powers of condemnation, and I recall we had a good deal of difficulty, and finally had to go to the legislature to get additional power.

The Lexington & Eastern Railway——

Mr. FOLK. Now, if you do not object, Mr. Smith, we will have a list of the roads read into the record from your annual report.

Mr. SMITH. Just a moment. Long Branch Coal Road—that is a little extension out to a coal mine. We did not want it to be made a part of the Louisville & Nashville Railroad, because it was known that in a short time the coal reached by it would be exhausted, and we would want to abandon the road. If it is a part of the Louisville & Nashville Railroad, under our charter, we could not do that, but we would be compelled to maintain and operate a nonproductive piece of property.

The Maysville & Lexington is undoubtedly erroneous. I do not know what it means.

The Morganfield & Atlanta was a separate corporation.

The Nashville & Decatur Railroad was a company formed by three original corporations. It was built before the war, and it was leased by the Louisville & Nashville under a lease effective from the 1st of July, 1871. The Owensboro & Nashville was a railroad that was started to be built by people along the line from Owensboro to Nashville. A short piece was built from Owensboro south, and another short piece was built north from Russellville, and south from Russellville to Adairville, and it was acquired by the Louisville & Nashville Railroad and completed between Russellville and Owensboro.

The Pontchartrain road is probably one of the oldest, if not the oldest, railroad in the United States. It was a piece of road acquired by the New Orleans and Mobile division, extending as a transfer railway between the city of New Orleans and Lake Pontchartrain, a distance of 6 or 8 miles.

St. Louis & Southeastern Railway Consolidated was acquired through sale, I think.

The Southeast & St. Louis Railway extended only from East St. Louis to Evansville, and the St. Louis & Southeastern Railway Consolidated includes the road from Evansville to Nashville, known as the Nashville & Henderson, which was acquired by bankrupt proceedings, separately from the line from East St. Louis to Evansville.

The Stouts Mountain road is one of these roads, as I say, which are under separate charter, to prevent being brought under the charter of the Louisville & Nashville Railroad. It has already been advanced and the rails taken up.

The Swan Creek Railway is another one of those roads. It goes out to some phosphate mines. It will be abandoned when the phosphate is exhausted.

Mr. FOLK. Please give the names of the lines controlled but not operated by the Louisville & Nashville Railroad. If you wish, you can read that from your annual report, to be exact.

Mr. STONE. We have no objection, Gov. Folk, to putting that portion of the report into the record. It is on file with the commission.

Mr. FOLK. Suppose we let him read the names as they appear in this list, subject to correction later.

Mr. STONE. All right. We can put it in at any time.

Mr. FOLK. In answer to that question, read these roads [indicating].

Mr. SMITH. Lines controlled but not operated by the Louisville & Nashville——

Chairman MEYER. Why would it not be the best way to copy it right into the record?

Mr. STONE. Yes; to make the complete copy of the report on file for the last fiscal year would be satisfactory.

Chairman MEYER. Then, in the absence of objection, that may be understood, and the reporter will please do so.

Mr. JOUETT. Mr. Smith, they will consider those names as read in without bothering you to read them in.

Mr. SMITH. I know; but I want to know it is correct.

Mr. JOUETT. It is going to be read from the report instead of that paper.

Mr. SMITH. Lines operated as separate organizations, of which this company owns the majority of the capital stock——

Mr. JOUETT. Mr. Smith, we have agreed, in order to save you the trouble of doing it, to copy that out of the report.

(The following list of names, as taken from the annual report of the Louisville & Nashville Railroad, referred to above, was later furnished to the reporter:)

LINES OPERATED UNDER THEIR SEPARATE ORGANIZATIONS IN WHICH THIS COMPANY OWNS A MAJORITY OF THE CAPITAL STOCK OR IS INTERESTED AS JOINT OWNER OR LESSEE.

Nashville, Chattanooga & St. Louis Railway; Central Transfer Railway & Storage Co., Louisville; Georgia Railroad and dependencies; Chicago, Indianapolis & Louisville Railway; Louisville, Henderson & St. Louis Railway; Woodstock & Brocton Railway.

LINES OWNED BY THIS COMPANY BUT OPERATED BY OTHER COMPANIES.

Paducah & Memphis division (leased to the Nashville, Chattanooga & St. Louis Railway); Clarksville & Princeton Branch (leased to Ohio Valley Railway Co.).

Main stem, first division, Louisville, Ky., to Bowling Green, Ky.; Springfield branch, Bardstown, Ky., to Springfield, Ky.; Lebanon branch, Lebanon, Ky., to Sinks, Ky.; Greensburg Branch, C. & O. Division, Ky., to Greensburg, Ky.; main stem, second division, Bowling Green, Ky., to Nashville, Tenn.; Chesapeake & Nashville branch, Gallatin, Tenn., to Scottsville, Ky.; Hartsville Junction, Tenn., to Hartsville, Tenn.

Nashville, Florence & Sheffield division, Columbia, Tenn., to Furnace Junction, Ala.; Sheffield Junction, Ala., to Sheffield, Ala.; Sheffield, Ala., to Tuscumbia, Ala.; Iron City, Tenn., to Pinkney, Tenn.; Napier Junction, Tenn., to Napier, Tenn.; Couch Junction to Couch, Tenn.

South & North Alabama division: Decatur, Ala., to Montgomery, Ala.; Hogeland Junction, Ala., to El Vista, Ala.; Monmouth, Ala., to Reids, Ala.; Elmore, Ala., to Wetumpka, Ala.; Helena, Ala., to Acton, Ala.

Montgomery & Prattville branch: Prattville Junction, Ala., to Prattville, Ala.

Birmingham mineral division: Black Creek, Ala., to Praco, Ala.; Ridgeland, Ala., to Arcadia, Ala.; Mineral Springs, Ala., to Wallmore, Ala.; Mineral Springs, Ala., to Rilma, Ala.; Crocker Junction, Ala., to Durant, Ala.; Udora, Ala., to Erskine, Ala.; Chetopa, Ala., to Banner, Ala.; Vulcan, Ala., to Sayre Mines, Ala.; Boyles, Ala., to Moragne, Ala.; Dolcito Junction, Ala., to Dolcito, Ala.; Palmers, Ala., to Bradford, Ala.; Dixiana Junction, Ala., to Dixiana, Ala.; Village Springs, Ala., to Mile Post 408, Ala.; Mattawana, Ala., to Gray Stone, Ala.; Altoona, Ala., to Schuler, Ala.; Boyles, Ala., to Trussville, Ala.; Red Cap Junction, Ala., to Graces, Ala.; Boyles, Ala., to Bessemer, Ala.; Vinita, Ala., to Graves Mines, Ala.; Blue Creek Junction, Ala., to Blocton Junction, Ala.; Valley Creek, Ala., to Virginia, Ala.; Connellsville Junction, Ala., to Connellsville, Ala.; Yolande, Ala., to Brookwood, Ala.

North Alabama Junction, Ala., to Searls, Ala.; Abernant, Ala., to Rock Castle, Ala.; Chamblee, Ala., to Goethite, Ala.; Caffee Junction, Ala., to Martaban, Ala.; Magella, Ala., to brick yard Y, Ala.; Arlo, Ala., to Docray, Ala.; Winetka, Ala., to Steinman, Ala.; Spring Gap No. 1, Ala., to Skyhy, Ala.; Graces, Ala., to Bessemer, Ala.; Readers, Ala., to Ferro No. 2, Ala.; Muscoda Junction, Ala., to Muscoda, Ala.; Tacoa, Ala., to Gurnee Junction, Ala.

Alabama mineral division: Calera, Ala., to Attalla, Ala.; Shelby, Ala., to Columbiana, Ala.; Gantts Junction, Ala., to Gantts Quarry, Ala.; Rock Springs, Ala., to Leba, Ala.; O'Conner Junction, Ala., to Buck, Ala.; Eureka, Ala., to Marbleton, Ala.

Montgomery & Mobile division: Montgomery, Ala., to Mobile, Ala.

Alabama & Florida division: Georgiana, Ala., to Graceville, Fla.; Duval, Ala., to Paxton, Fla.; McPhail, Ala., to Lakewood, Fla.

New Orleans & Mobile division: Mobile, Ala., to New Orleans, La.

Southern Alabama division: Escambia Junction, Ala., to Selma, Ala.; Camden Junction, Ala., to Camden, Ala.

Myrtlewood branch: Selma, Ala., to Myrtlewood, Ala.

Pensacola division: Flomaton, Ala., to Pensacola, Fla.

Pensacola & Atlantic division: Pensacola, Fla., to River Junction, Fla.; Crest View, Fla., to Florala, Ala.

Cincinnati division: Louisville, Ky., to Cincinnati, Ohio; East Louisville, Ky., to South Louisville, Ky.; A Street connection, Louisville, Ky.; Louisville, Ky., to Water Works, Ky.

Lexington branch: La Grange, Ky., to Lexington, Ky.; Shelbyville, Ky., to Christiansburg, Ky.

Shelby branch: Anchorage, Ky., to Shelbyville, Ky.

Bloomfield branch: Bloomfield Junction, Ky., to Bloomfield, Ky.

Kentucky division: Covington, Ky., to Corbin, Ky.; Fort Estill Junction, Ky., to Rowland, Ky.; Brush Creek, Ky., to Johnetta, Ky.

Louisville & Atlantic division: Versailles, Ky., to Maloney, Ky.; Heidelberg, Ky., to Idamay, Ky.

Knoxville division: Corbin, Ky., to Etowah, Tenn.; Wilton Junction, Ky., to Wilton No. 2, Ky.; Saxton, Ky., to Jellico, Kentucky-Tennessee; Jellico, Kentucky-Tennessee, to Myrlin, Ky.; Maxie, Ky., to Kensee, Ky.; Holton, Tenn., to Hyde, Tenn.; Ilford, Tenn., to Westbourne, Tenn.; Dossett, Tenn., to Khotan, Tenn.; Khotan, Tenn., to Wind Rock, Tenn.; Armona, Tenn., to Mary-ville, Tenn.; Athens, Tenn., to Tellico Plains, Tenn.; Savoy, Ky., to Gatiff, Ky.; Nevisdale, Ky., to Packard, Ky., Hacker, Ky., to Bon, Ky.; Allingham, Tenn., to Harriman, Tenn.; Mentor, Tenn., to Greenback, Tenn.; Greenback, Tenn., to Jena, Tenn.; Atlanta division, new line: Etowah, Tenn., to Junta, Ga.

Atlanta division, old line: Etowah, Tenn., to Marietta, Ga.; Murphy Junction, Ga., to Murphy, N. C.

Cumberland Valley division: Corbin, Ky., to Norton, Va.; Foar Mile, Ky., to Melton, Ky.; Wenrick, Ky., to Kettle Island, Ky.; Orbig, Ky., to Harrison, Ky.; Olcott, Ky., to Evanston, Ky.; Pennington, Va., to Pocket, Va.; Yingling, Ky., to Sheaffer, Ky.; Surran, Ky., to Blowers Ky.

Middlesboro Railroad: Middlesboro, Ky., to Manring, Tenn.; Stony Fork Junction, Ky., to Ellwood, Ky.

Memphis line: Memphis Junction, Ky., to Memphis (freight station), Tenn.; Leewood, Tenn., to Dulon, Tenn.

Clarksville & Princeton branch: Princeton Junction, Tenn., to Gracey, Ky.

Clarksville mineral branch: Hematite, Tenn., to Pond, Tenn.; Van Leer, Tenn., to Cumberland Furnace, Tenn.

Henderson division: Amquire, Tenn., to Howell, Ind.; Mortons, Ky., to Atklow, Ky.; Romney, Ky., to Empire Mine, Ky.

Morganfield branch: Madisonville, Ky., to Providence Mines, Ky.; Trident to Gamo; Madisonville to Trident.

Madisonville, Hartford & Eastern Railroad: Trident, Ky., to Ellmitch, Ky.

Lines Operated But Not Owned.

OPERATED AS OWNER OF ENTIRE CAPITAL STOCK.

Lewisburg & Northern Railroad.

Brentwood, Tenn., to Tennessee-Alabama State line.

Tuscaloosa Mineral Railroad: Brookwood, Ala., to Tuscaloosa, Ala.; Holt Junction, Ala., to Holt, Ala.

Bay Minnette & Fort Morgan Railroad: Bay Minette, Ala., to Foley, Ala.

Pontchartrain Railroad: Pontchartrain Junction, La., to Milneyburg, La.

Lexington & Eastern Railway: Netherland, Ky., to Dumont, Ky.; Dumont, Ky., to McRoberts, Ky.; Dumont, Ky., to Quicksand, Ky.

Wasiota & Black Mountain Railroad: Corby, Ky., to Baxter, Ky.; Baxter, Ky., to Benham, Ky.; Baxter, Ky., to Ages, Ky.; Ponza, Ky., to Amru, Ky.; Crosby, Ky., to Balkan, Ky.

Owensboro & Nashville Railway: Owensboro Ky., to Adairville, Ky.

Southeast & St. Louis Railway: Evansville, Ind., to East St. Louis, Ill.; McLainsburg Junction, Ill., to Shawneetown, Ill.; O'Fallon Junction, Ill., to O'Fallon, Ill.

Morganville & Atlanta Railroad: Providence, Ky., to Morganville, Ky.

Maysville & Lexington Railroad, north division: Paris, Ky., to Maysville, Ky.

Maysville & Lexington Railroad, south division: Paris, Ky., to Lexington, Ky.

Long Branch Coal Railroad: Mile Post 408, Alabama, to Lehigh No. 2.

Kentucky Highlands Railroad: Marble, Ky., to Versailles, Ky.

Swan Creek Railway: Swan Creek, Tenn., to Faucette.

OPERATED UNDER LEASE.

Nashville & Decatur Railroad: Nashville, Tenn., to Decatur Junction, Ala.; Tennessee-Alabama State Line to Athens, Ala.

OPERATED UNDER CONTRACT.

Glasgow Railway: Glasgow Junction, Ky., to Glasgow, Ky.

Tennessee Western Railroad: Iron City, Tenn., to Collinwood, Tenn.

Elkton & Guthrie Railroad: Elkton, Ky., to Guthrie, Ky.

OPERATED UNDER TRACKAGE ARRANGEMENTS.

Louisville & Nashville Terminal Co., track at Nashville, Tenn.: Southern Railway, Decatur Junction, Ala., to Decatur, Ala.; Furnace Junction, Ala., to Sheffield Junction, Ala.; Gurnee Junction, Ala., to Blocton, Ala.; Aden, Ala., to Belle Ellen No. 2; Seymour, Ala., to Piper, Ala.; Ardella, Ala., to Hansell.

Ala.; Hyde, Tenn., to Fonde, Ky.; tracks at Anniston, Ala.; tracks at Jellico, Tenn.; tracks at Alabama City, Ala.; tracks at Mobile, Ala.; tracks at Louisville, Ky.; tracks at Decatur, Ala.; tracks at Sheffield, Ala.

Atlanta & Birmingham Air Line Railway: Wellington, Ala., to Cartersville, Ala.

Atlantic Coast Line Railway, track No. 1, River Junction, Fla.

North & Western Railway, track at Norton, Va.: Providence Coal Co., track at Providence, Ky.; Virginia & Southwestern Railway, Pocket, Va., to Darbyville, Va.

Western Railway of Alabama and Mobile & Ohio Railroad: Track at Montgomery, Ala.

Nashville, Chattanooga & St. Louis Railway, tracks at Alabama City, Ala.; Atlanta, Go., to Hills Park; Morange, Ala., to Attalla, Ala.; Junta, Ga., to Altlanta, Ga.; track at Gadsden, Ala.; tracks in and about Nashville, Tenn.; tracks at McKenzie, Tenn.

Baltimore & Ohio Southwestern Railway: Track at East St. Louis, Ill.

Birmingham & Atlantic Railroad: Tracks at Talladega Furnace, Ala.

Terminal Railroad Association of St. Louis: Track at East St. Louis, Ill., relay depot, East St. Louis, Ill., to Union Station, St. Louis, Mo.

Metropolitan Rapid Transit Light & Power Company: Track at Budwig, Ala.

Woodstock & Blocton Railway: Blocton Junction to Blocton, Ala.

Mobile & Ohio Railway Co.: Track at Mobile, Ala.

Western Railway of Alabama: Tracks at Selma, Ala., and tracks at Montgomery, Ala.

Union Railway: Track at Memphis, Tenn.

Covington & Cincinnati Elevated Railroad, Transfer & Bridge Co., Central Union Depot, Cincinnati, Ohio, to Covington, Ky.: Tracks at Cincinnati, Ohio.

Pittsburgh, Cincinnati, Chicago & St. Louis Railway: Track at Cincinnati, Ohio.

Cleveland, Cincinnati, Chicago & St. Louis Railway: Tracks at East St. Louis, Ill.

Louisville & Interurban Railway: Water Works, Ky., to Prospect, Ky.

Pascagoula Street Railway & Power Co.: Track at Pascagoula, Miss.

Continental Coal Corporation: Straight Creek, Ky., to Blanche, Ky.

Louisville & Jeffersonville Bridge Co.: Track at Louisville, Ky.

Louisville, Henderson & St. Louis Railway: Track at Owensboro, Ky.

Chicago, Burlington & Quincy Railroad: Tracks at East St. Louis, Ill.

Chicago & Ohio Railway, Lexington, Ky., to Netherlands, Ky.: Tracks at Lexington, Ky., and tracks at Covington, Ky.

Lexington Union Station Co.: Tracks at Lexington, Ky.

Mobile & Ohio Railroad: Track at Mobile, Ohio.

Alabama Great Southern Railway: Boyles, Ala., to Spencer Quarry, Ala.

Northern Alabama Railway: Track at Sheffield, Ala.

Southern Railway & Northern Alabama Railway: Track at Sheffield, Ala.

Central of Georgia Railway: Tracks at Montgomery, Ala., and tracks at Sylacauga, Ala.

Sloss-Sheffield Steel & Iron Co.: Tracks at Sheffield, Ala.

Georgia Railroad: Tracks at Atlanta, Ga.

Gulfport & Mississippi Coast Traction Co.: Tracks at Biloxi, Miss.

Illinois Central Railroad: Tracks at Memphis, Tenn., and tracks at New Orleans, La.

Morgan's Louisiana & Texas Railway: Tracks at New Orleans, La.

Yazoo & Mississippi Valley Railroad Co.: Tracks at New Orleans, La.

Illinois Central Railroad and Yazoo & Mississippi Valley Railroad: Tracks at Memphis, Tenn.

Kansas City, Memphis & Birmingham Railway: Tracks at Memphis, Tenn.

Ohio & Kentucky Railway: Track at O. K. Junction, Ky.

Mount Pleasant Southern Railway: Mount Pleasant, Tenn., to Phosphate Mines, Tenn.

New Orleans & Northeastern Railroad: Track at New Orleans, La.

New Orleans, Mobile & Chicago Railroad: Track at Mobile, Ala.

New Orleans Terminal Co.: Tracks at New Orleans, La.

Louisiana Southern Railway: Tracks at New Orleans, La.

Memphis Union Station Co.: Tracks at Memphis, Tenn.

Tennessee Central Railroad: Tracks at Nashville, Tenn.

Mr. Folk. Can you tell, Mr. Smith, what the mileage was of the Louisville & Nashville Railroad when you came into the presidency in 1891, approximately?

Mr. Smith. When I came into the presidency?

Mr. Folk. Yes, sir.

Mr. Smith. In 1884?

Mr. Folk. In 1891, the last time.

Mr. Smith. No; I can not, without referring to the annual report. The annual report gives it, the annual report for the year ended June, 1891, will give that correctly.

Mr. Folk. Do you know what the present mileage of the lines is owned and controlled by the Louisville & Nashville Railroad?

Mr. Smith. The last annual report, the report for the year ended June 30, 1915, has mileage of lines owned and operated, 5,037.12 miles.

Mr. Folk. Now, what is the mileage of the lines controlled?

Mr. Smith. "Lines operated under their separate organization, in which the Louisville & Nashville Railroad Co. owns a majority of the capital stock or is interested as joint owner or lessee," 2,360.07, less mileage used under trackage arrangements, 59.32; net, 2,300.75.

Mr. Folk. Now, Mr. Smith, the majority of the stock of the Louisville & Nashville Railroad Co. is owned by the Atlantic Coast Line, is it not?

Mr. Smith. The Atlantic Coast Line what?

Mr. Folk. Railroad.

Mr. Smith. Is it the railroad or the railway company?

Mr. Folk. Railroad company.

Mr. Smith. Atlantic Coast Line Co., I think.

Mr. Folk. There are two companies. One is the railroad and the other is a holding company.

Mr. Smith. Possibly.

Mr. Folk. Then, the railroad company owns the majority of the stock of the Louisville & Nashville Railroad?

Mr. Smith. I don't know whether it is the railroad company or the holding company. It is a fact that is easily ascertained.

Mr. Folk. Do you know who controls the company that owns a majority of the stock in the Louisville & Nashville Railroad Co.?

Mr. Smith. The stockholders.

Mr. Folk. What individual is the largest owner?

Mr. Smith. I do not know.

Mr. Folk. Do you know?

Mr. Smith. I do not.

Mr. Folk. Do you know whether Mr. Henry F. Walters is the largest owner and controls the company that controls the majority of the stock of the Louisville & Nashville?

Mr. Smith. Mr. Henry Walters?

Mr. Folk. Mr. Henry Walters.

Mr. Smith. I don't know how much he owns—how much of the stock of the Atlantic Coast Line Railroad Co. or Railway Co. that he individually owns, and I do not know who the stockholders are. I do not think I have ever seen a list.

Mr. Folk. Who votes stock of the Atlantic Coast Line Co. or the Atlantic Coast Railroad Co. in the Louisville & Nashville Railroad Co.?

Mr. SMITH. Why, almost anybody that holds proxies. The elections are very simple matters. The proxies are sent out and the secretary of the company votes them. The stockholders do not attend meetings much any more.

Mr. FOLK. For instance, who attended the last stockholders' meeting of the Louisville & Nashville Railroad?

Mr. SMITH. I think Mr. Walters was there. He may have held proxies.

Mr. FOLK. Were there any other stockholders there of the Louisville & Nashville Railroad?

Mr. SMITH. Oh, yes; there were. I was there. I am a very small stockholder.

Mr. FOLK. Who else?

Mr. SMITH. I do not believe I know; different stockholders.

Mr. FOLK. The stockholders' meetings of the Louisville & Nashville are largely matters of form, are they?

Mr. SMITH. The stock is represented by proxies. In the olden days, when the people along the line controlled, they or their representatives attended the meetings, and it was sometimes quite a gathering. That was also so on the N., C. & St. L. On the N., C. & St. L. Railway I think there are some stockholders who visit Nashville on the day of the meeting. Under an old regulation anyone having a share of stock is entitled to free transportation to the annual meeting and return, and as a share of the stock was only $25, that trip to Nashville was quite a dividend on their $25. There are quite a number of that type of stockholders yet, but I do not think many of them ever attend the meetings. They go to Nashville for other purposes.

Mr. FOLK. So, in the old days the meetings of the stockholders of the Louisville & Nashville were largely attended by the stockholders?

Mr. SMITH. Yes; it was quite an event.

Mr. FOLK. That is no longer true?

Mr. SMITH. No. The control passed from the municipalities and counties and local stockholders to others in 1879. That is when they sold their stock.

Chairman MEYER. Gov. Folk, let me ask this question: As a matter of interest, are there still $25 shares of the N., C. & St. L. or L. & N.?

Mr. SMITH. Oh, not of the Louisville & Nashville. The Louisville & Nashville have always been $100 a share, but the N., C. & St. L. was originally $25, and then changed into $100; but there are quite a number, at least, of the stockholders that never have surrendered their $25 shares.

Chairman MEYER. So there are still $25 shares outstanding?

Mr. SMITH. Oh, yes.

Mr. FOLK. The meetings of the stockholders of the Louisville & Nashville now are for the purpose of adopting votes or resolutions already prepared, are they not?

Mr. SMITH. No. The object of the annual meeting is to elect the board of directors, mainly.

Mr. FOLK. Yes.

Mr. SMITH. And to approve, if they do approve, the management of the company for the previous fiscal year, and to transact any other business that may be properly brought before them.

Mr. Folk. But you know in advance of the meeting of the stockholders who is to compose the board of directors to be elected, do you not?

Mr. Smith. No; I can not say that I know.

Mr. Folk. Well, who does know—Mr. Walters?

Mr. Smith. Mr. Walters may know. It is a matter in which I do not take any marked personal interest.

Mr. Folk. Who selects the board of directors, then, for the Louisville & Nashville?

Mr. Smith. The stockholders.

Mr. Folk. What particular stockholder—Mr. Walters?

Mr. Smith. The ones that hold the proxies to the majority of the stock would be the ones to have the power to select.

Mr. Folk. Well, who held those proxies at the last meeting?

Mr. Smith. I do not know. Mr. Walters attended, but I think you attended the meeting [addressing Mr. Stone].

Mr. Stone. Yes, sir.

Mr. Smith. I was in the adjoining room. Had not the proxies been sent to Mr. J. H. Ellis, secretary, in advance?

Mr. Stone. I think nearly all of the proxies were sent in beforehand, Gov. Folk, to the secretary, Secretary Ellis.

Mr. Smith. The stock in those large corporations is so widely scattered that it is practically impossible for the stockholders to attend the meetings, and the procedure is for the management, or some one representing the management, in advance of the meeting, to send out circulars calling attention to the fact that there is a meeting of the stockholders or that there is to be a meeting of the stockholders, and suggesting, if they are not going to attend in person, that they submit the proxies, and that they have a right, of course, to indicate what they want done with their proxies, if they send them.

Mr. Stone. I may state for your information, if it is a matter that you desire to know: Mr. Walters held the stock of the Atlantic Coast Line Co. at the last stockholders' meeting, on the first Wednesday in October, I think it was.

Mr. Smith. I will give an extreme illustration of that. The Southern Pacific Railway Co., with a very great mileage, is a Kentucky corporation, and at the annual meetings the stock is sent out to an attorney, I think, at Louisville, and possibly some one from the headquarters office, which is in New York, may attend and vote the proxies. There may not be a single stockholder present.

Mr. Folk. Not a single stockholder present?

Mr. Smith. There may not be a single stockholder present. It may all be done by proxies, by an attorney at Louisville, and possibly by some one from the headquarters office. That is the way, and almost the only way, in which the affairs of those large corporations can now be conducted, with stock scattered not only over the United States, but largely in Europe. At times, the majority of the stock of the Louisville & Nashville Co. has been held in Europe.

Mr. Folk. Are the directors of the Louisville & Nashville selected in the stockholders' meeting after being nominated, or is a list made out beforehand by some one, and is the list agreed on beforehand as a general rule?

Mr. Smith. The procedure is very simple. It being known that the majority of the stock was held by proxies, I suppose the procedure would be, although I do not attend them personally, to prepare a ticket of the names of stockholders to be voted for, and if there are any individual stockholders there, and I am there, and I am but a very small owner of stock, I am permitted to vote. You write your name on the slip or ticket containing the names of the directors, and there has been no serious contention at the stockholders' meetings since about 1873, I think, when there was a very sharp contest. I do not think there has been any serious contest since. There have been times when the majority protested against certain acts. I think there were some in 1882, when some stockholders, in opposition, sent some proxies out to a certain party in Louisville and he made a display of them, but he was in the minority and he finally concluded to go with the majority.

Mr. FOLK. Now, since you have been president of the Louisville & Nashville, Mr. Smith, the road has prospered and is in a prosperous condition to-day?

Mr. SMITH. Sometimes it has prospered, and sometimes quite the reverse. Just now we are reasonably busy. A year ago we were in distress. Business in this country is subject to many contingencies, and the Louisville & Nashville and its controlled lines—and by controlled lines I mean the Nashville & Chattanooga, the Western & Atlantic, a leased road, the Georgia Line Railroad and dependencies, the Atlanta & West Point and Western Railway—are the only roads south of the Ohio and east of the Mississippi River that have not been through bankruptcy one or two or three times, except one line from Memphis to New Orleans, built by wealthy men and afterwards sold to the Illinois Central. Whether they are controlled at a loss, I am not sure. And I think that applied also to the road originally known as the Wilmington & Weldon, now a part of the Atlantic Coast Line, and perhaps one or two other roads like the Richmond & Fredericksburg. The Cincinnati Southern, owned by the city of Cincinnati, has never been reorganized, but the lessee company, the operating company, has been in the hands of a receiver. During that time the Louisville & Nashville has dragged on the bottom. In 1884 it was practically bankrupt for a while, and it was only due to the leniency of certain creditors that loaned money on call, but who did not press their claims, that it was not placed in the hands of a receiver. In 1893 it was not earning any surplus, and it went through this panic of 1897.

Mr. FOLK. 1907.

Mr. SMITH. 1907; yes. We are now just going through the trouble of 1914 and 1915; we are just recovering from that. It is a business that is subject to extreme fluctuation. Just now we are busy, and we could do more if we had more equipment.

Mr. FOLK. The policies of the Louisville & Nashville Railroad during this period—that is, 1891 to this time—have been controlled by yourself?

Mr. SMITH. By the board of directors.

Mr. FOLK. Practically by yourself?

Mr. SMITH. I would not like to say that. The policy of the Louisville & Nashville Railroad Co. since 1869 has been to do what we could to increase traffic, to build up traffic.

Mr. FOLK. Traffic for the Louisville & Nashville?

Mr. SMITH. For the Louisville & Nashville and its controlled lines; and in endeavoring to do that the only way in which we could make a profit would be to secure the adoption and maintenance of reasonable rates, and we have struggled all during that time to accomplish that—to secure agreements with competing and connecting lines to endeavor to enforce the maintenance of rates, in which for the past few years we have been greatly assisted by the Interstate Commerce Commission, the authority vested in the Interstate Commerce Commission to control the maintenance of published rates.

Mr. FOLK. You believe, then, that governmental regulation is a good thing for the railroads, do you?

Mr. SMITH. I have expressed myself on that matter in the past year very voluminously. I persistently opposed giving the Interstate Commerce Commission the increased powers, or the power to adjust rates, and at the same time was doing all that I possibly could—in fact, I spent my lifetime in trying to induce the managers of the railroads to maintain rates. We were only partially successful, especially with the lines north of the Ohio River. There are a good many difficulties in the way of the Interstate Commerce Commission making and enforcing the maintenance of rates, and their action has not always met with my approval, especially when they take away from the Louisville & Nashville revenue on the traffic it has been receiving, by reducing their rates, and the taking off of facilities and giving them to our competitors, etc.

Now, I recognize that it is impossible for a body like the Interstate Commerce Commission to administer the affairs of the railroads of the country to the satisfaction of everybody, and they must necessarily consider the people, and they must listen to anyone that files a complaint. Everybody is entitled to a hearing. As I said years ago, the rates were practically made in town meetings. They have got to listen to everybody, and they have to give everybody consideration. They are a political body, and are subject to discipline if they do not conduct the affairs of the railways to the satisfaction of the patrons of the railways—the people.

Mr. FOLK. Some years ago, Mr. Smith, you expressed the view that the Government should either own the railroads or they should be allowed to run as private enterprises without any governmental regulation. Have you changed your mind, or are you still of that view?

Mr. SMITH. I do not think I ever expressed the opinion that they should be allowed to run without regulation. I have repeatedly, in an offhand way, when discussing these questions, stated that the Government ought to own the railroads if they are going to regulate them and manage them. As it is now, the Government, through the Interstate Commerce Commission and various administrative and legislative bodies, is practically in control of the railways—not only of the rates, but regulations—and I do not see why the Government, having such control without any responsibility, should buy them. I do not believe they will. I think, in the end, unless there is some change in public opinion, the ownership of the roads will be rendered valueless to their present owners, and the property will be practically confiscated. It is tending that way.

Mr. FOLK. Will be rendered valueless by what, Mr. Smith?

Mr. **Smith.** By control and management, or mismanagement of the Government, by reducing rates and creating regulations which are supervised by the labor unions and other antagonistic bodies.

Mr. **Folk.** Suppose there were no governmental regulations——

Chairman **Meyer.** Gov. Folk, before we get too far away from what we had a moment ago: Mr. Smith, I wish you would please tell us what you mean by a political body. I understood you to say the commission was a political body.

Mr. **Smith.** Subject to political control. There is, and always has been, I suppose, since any capital was created, antagonism between the people and the capitalists, and if the commission, in their management, should, in the opinion of the majority of the people, favor the railways, this majority of the people, or through the legislative bodies, will abolish the Interstate Commerce Commission. If necessary, in time, they will do the same thing with the Supreme Court, by changing the Constitution. It is the result of a majority rule, or democracy.

Mr. **Folk.** You think that if the Supreme Court should favor the railways that the people would abolish the Supreme Court?

Mr. **Smith.** Certainly. As soon as they see the courts favering the railways they are wiped out, like the Commerce Court.

Chairman **Meyer.** Mr. Smith, what you refer to as the voice of the people, in so far as it relates to the commission, is the voice expressed in laws?

Mr. **Smith.** Yes.

Chairman **Meyer.** Intrusted to the commission for administration; is not that correct?

Mr. **Smith.** Created by public opinion, fostered and aided by the very powerful lobby of the Interstate Commerce Commission, right on the ground, demanding an increase and calling for additional power every year. You even now are pressing to get more power to examine correspondence, and why you should want any more than you have already had from the publications last week, I do not know. You even got our Irulus letter in.

Chairman **Meyer.** Now, you speak of a lobby of the commission, and I am really getting interested, because I did not know that there was such a thing.

Mr. **Smith.** As what?

Chairman **Meyer.** You spoke of the commission having a lobby. I do not think you mean quite that, do you?

Mr. **Smith.** That is not considered a very respectable term, and I, perhaps, ought to withdraw it; but you are here on the ground, you are asking for this legislation, and you are appearing before committees and advocating it, and pulling all strings, probably, or some of them, to get what you want. You want more power, more power, and more power, and you have been asking it now since 1887, since you were first created.

Chairman **Meyer.** When you speak of a lobby, you mean that members of the commission, at the request of the respective committees of both Houses of Congress, appear before such committees and express their views with respect to questions that they were invited to talk about?

Mr. SMITH. I do not think you always have to be invited by the committees of the House and Senate, and this very proceeding that we are proceeding under now is a very good illustration. A Senator who has a grievance, or thinks he has, introduces a resolution. After the expiration of several months, the resolution is adopted by unanimous consent of the Senate, when 14 Members of the 96 Senators, I believe, are present, directing the Interstate Commerce Commission to proceed with certain investigations, which the Interstate Commerce Commission proceeds promptly to do. Being on the ground and being organized gives them a very great advantage, when they are seeking additional powers or additional legislation, as you are now pressing for power to examine correspondence, which, it seems to me, is wholly unnecessary, in view of what we have already got into the record of this proceeding last week.

Mr. FOLK. Suppose there were no regulations by the Government, Mr. Smith, who would determine what is a reasonable rate, and how would a shipper get reasonable rates?

Mr. SMITH. We got along very well when that was left as it was prior to the act to regulate commerce, in 1887, between the shippers and the railways. They were the parties to the agreement, and they were the parties directly interested. They managed to get along, but the result was most unsatisfactory to a large portion of the railway lines, in that the big shippers got the best of them. It was not that the rates were too high, but they remained too low, and were unjust because the traffic was moved largely by special rates, and it was then unlawful, but there was no way, no successful way of prohibiting or preventing it.

Mr. FOLK. You think, then, that the matter of rates should be left between the railroad officials and the shippers?

Mr. SMITH. That is the way it was. I can not say that I would favor withdrawing from the commission power to adjust rates, but that you should continue to struggle with them to secure an equitable adjustment. I recognize that the problem is one of insurmountable difficulties, especially in our country, and I mean by "our country" south of the Ohio and east of the Mississippi Rivers, where the territory is surrounded by water lines, and where the rates from the organizations of railroads have been adjusted to meet the competition of the water lines, and at some rail points; in other words, where we have charged more for the shorter than for the longer haul, a problem that is almost impossible of satisfactory solution. If it was done fairly and with due regard to the commercial conditions of the country, which, undoubtedly, the commission is striving hard to do, it necessarily involves an increase in some instances, and such increases will be resisted. It is a thing to be tried out and worked out. Now, so far as I am advised, and I have not been very active for some years in this matter, the commission is patiently at work trying to solve that problem and is meeting, of course, with difficulties. I recognize that that method of adjusting rates, while justified at the time, has serious disadvantages.

Take the Louisville & Nashville Railroad, the main line from Louisville to Nashville, built by the municipalities and the counties and the people along the line, starting out from Louisville to adjust the rates, having due consideration for the limitations under the charter, to meet the competition then existing, by moving the traffic over the roads, the highways, which could only be done to a limited extent. The farmer raising corn, for instance, and having a surplus, could not afford to haul his corn to the market. He must condense it. He can use it to fatten hogs or beef cattle or horses, etc., that could walk to the market, or he could condense it into whisky, which would reduce the transportation cost. The railroad had to meet that; and the same way with tobacco. Tobacco could be condensed and would stand a considerable haul. The rates were adjusted to meet that competition, subject to the limitations of the charter, and the result was that at the time we got out to Bowling Green, say, 113 miles, we got to the maximum; it would not stand any more, and then we carried that along until we got down to Nashville. At Nashville we came into competition with the Cumberland River. Now, that river competition prevented the securing of traffic at the rates that had been charged to these local stations. The rates to the local stations had been quite satisfactory to the people along the line and the people who owned the road, because, notwithstanding they now appear to be very high, say, 20 cents for grain per hundred for 100 miles and 30 cents per 100 pounds per 100 miles for tobacco, they were so much less than it had hitherto cost them that there was no objection. Now, remember that this road was owned by these people——

Mr. Folk. Right there, Mr. Smith, you say so much lower than the rate had been theretofore——

Mr. Smith. The cost had been theretofore.

Mr. Folk. You mean by wagon?

Mr. Smith. Wagon.

Mr. Folk. Wagon or horseback.

Mr. Smith. Yes.

Mr. Folk. In other words, you think——

Mr. Jouett. Let him go back to his line of testimony, Governor.

Mr. Folk. Just let me ask you this question and then he may proceed.

Mr. Jouett. All right.

Mr. Folk. You think, if they do not like the rates charged by the railroads, that the remedy would be that they can walk or hire wagons.

Mr. Jouett. I submit he has not said anything of that sort.

Mr. Smith. Postpone that. Let me finish the other statement first and then I will give you something else.

Mr. Folk. All right.

Mr. Smith. Now, these people owning this railroad found that they could not secure any traffic between Louisville and Nashville at the rates charged to intermediate points, but by reducing the rates to a certain point they could get some additional traffic which gave a revenue in excess of the additional cost and added something to the net revenue of the road that they owned. They did not make the slightest objection, to our knowledge, when, in competition with the river, it was decided to make lower rates for the longer distance than for the shorter distance, and that penetrated nearly all over the South. Then there were one or two places like Atlanta, and to some extent Knoxville, where the competition, rail competition, had the same effect as the water lines. This is the condition of affairs now. The objection in the development of the traffic to that adjustment of rates has been and is that it tended to discourage the establishment of industries, and so forth, at those intermediate points, and in time if they kept on making these competitive points, they would finally reach a point where the rates to the competitive points would be so near to the other that they would be forced to reduce the rates to the intermediate points to not greater than to the points on the river.

Now, in time, when the act to regulate commerce was passed, in 1887, the fourth section was construed by practically all the railroad managers in the United States as absolutely prohibiting charging more for the shorter than for the longer haul. I think that one other railroad manager and I were the only two in the United States that took a different view. We claimed that the amendment known as the Camden amendment, "Under substantially similar circumstances and conditions," changed that. At the first meeting of the Interstate Commerce Commission, that matter was brought up. The Louisville & Nashville, and many of the roads in the South, whose revenues depended largely on the rates to and from these intermediate points, would have been bankrupt overnight had that construction been enforced; that is, the construction of the fourth section prohibiting the charging of more for the shorter haul than for the longer haul, and the railroads connecting with the Louisville & Nashville Railroad at the Ohio River insisted upon their construction, and gave notice withdrawing all joint rates with the Louisville & Nashville Railroad unless the Louisville & Nashville adopted their construction of the law.

When the announcement was made of the appointment of the commission, I immediately communicated with each member, asking for a hearing, because, as I say, if it was absolutetly enforced at that time it would have meant bankruptcy. At the first meeting of the commission the construction that I had given to that fourth section was not adopted, but we were given absolution for at least a short period while the commission made a trip around through the South investigating the conditions, and then our connections north of the Ohio River, with one exception, restored their traffic regulations with us.

As an illustration of that, our competing line at that time, known as the Erlanger system, from Cincinnati to New Orleans, already put their rates into effect according to their construction, which doubled their rates from Cincinnati to New Orleans, in order to maintain their rates to intermediate points.

I have always recognized that that adjustment, as I have already said, tended to discourage development at the intermediate points, and have believed that the time would come when we would have such a modification of that when we were strong enough financially and in other ways to stand it, to do away with that, and I am heartily in favor of the efforts now being made by the commission to solve the almost unsolvable problem of adjusting rates to that large territory in a way that will, in the end, work out, as I believe, to the benefit of the country at large. The difficulty is that in doing that they will have to upset many of our arrangements and will do things that we will all think are unjust, like the reducing of the rates to Bowling Green, which only encourages our friends at Bowling Green to demand increased facilities. After getting a reduction of their freight rates to about one-half, and a reduction of passenger rates from 3 to 2½ cents per mile, they are making strenuous demands for large expenditures for increased passenger station facilities, etc.

But those are matters that will, in time, in my opinion, be solved; and I, by no means, have favored, and do not favor, the withdrawal of the authority, under existing conditions, of the commission to make and enforce reasonable rates.

Mr. FOLK. Fourth section?

Mr. JOUETT. No; he did not say that.

Mr. FOLK. You recognize the right of the shipper to a reasonable rate, don't you, Mr. Smith?

Mr. SMITH. I recognize the right of a shipper and of the carrier to a reasonable rate.

Mr. STONE. I would like to have the stenographer read Gov. Folk's question.

Mr. JOUETT. You mean this last one or the one before, Mr. Stone?

Mr. STONE. No; the original question.

Mr. JOUETT. You mean the original question?

Mr. STONE. Yes, sir.

(The stenographer thereupon read the pending question as previously recorded.)

Mr. JOUETT. If you want to go on with the answer to that other question you may do so now. Just read it again, please.

(The stenographer thereupon reread the pending question as previously recorded.)

Mr. SMITH. In answer to that I will read a communication I sent to the Hon. Shelby M. Cullom, chairman of the Senate Committee on Interstate Commerce, dated April 24, 1900. It reads as follows:

Hon. SHELBY M. CULLOM,
Chairman Senate Committee on Interstate Commerce, Washington, D. C.

DEAR SIR: My attention has been called to the following portion of the statement of Hon. Charles A. Prouty, member of the Interstate Commerce Commission, before your committee on the 13th instant:

"But no attorney directs the fortunes of the Louisville & Nashville; they are presided over absolutely by a gentleman whose name is Milton H. Smith. With that gentleman not long ago the commission had some conversation as to its powers, and since that is a matter of record I may be permitted to refer to it. Upon that occasion I asked Mr. Smith what power under the present law the commission had to correct an unreasonable rate upon his road. I put to him in substance this question: 'You make a rate of fare from a point in Tennessee to a point in Kentucky which is unreasonably high. Now, what remedy has a member of the public who desires to travel from one point to another?' Mr. Smith's reply was, 'He can walk.' I believe that he added he might hire a horse and ride. I have been told by a judge of the circuit court of appeals before whom the claim was made that the attorney of Mr. Smith insisted that the only test of a reasonable freight rate was the price at which that freight could be hauled by a team; that the Louisville & Nashville Railroad might charge, at its discretion, any price above that for the transportation of freight."

The way in which this "record" was made should be brought to the attention of the committee, and Mr. Prouty's quotation from it, being garbled and erroneous, necessitates a correction.

On December 1 and 2, 1897, I attended the hearing before the commission relative to car couplers and air brakes and made a short statement. After I had left the city I was advised that the commission desired to examine me under oath. I returned to Washington on December 6, 1897, and appeared before the commission, expecting, of course, to be examined on "Hearing on petitions for extension of time within which to comply with the provisions of the act of March 2, 1893" (safety appliance act).

As a matter of fact, however, the examination upon this subject, relative to which I understood I was called before the commission, proved to be merely introductory to an examination on matters of a much more general character. I was questioned as to the relations between the Louisville & Nashville Railroad Co. and subordinate corporations; as to the general adjustment of rates for transportation of property; as to the maintenance of rates; as to rebates; as to free passes; as to the application of company's funds in distributing information; as to the adjustment of local rates in different States; as to the effect of State commissions with mandatory powers; as to the probable effects of possible national legislation; as to what objections there are to conferring upon the Interstate Commerce Commission the power to fix rates; as to the relative adjustment of rates between different communities; and many other matters wholly foreign to the subject presumed to be in hand; but all more or less pertinent to the rate-making powers which the commission was even then actively endeavoring to procure. I was interrogated for more than two hours, and fully four-fifths of the time was taken up with an examination on these general matters having no relation whatever to air brakes and car couplers, and the original or the ostensible purpose of the examination was almost wholly lost sight of.

This discussion, started by the chairman of the commission, and wholly beyond the scope of the inquiry for which I understood the commission was sitting, was apparently entirely informal, although I had been placed under oath; and, so far as I was concerned, was perfectly frank and free; and such remarks as I made were not intended for publication, and they were unfairly and without my knowledge made a part of the public record. This, on my part, totally unexpected discussion, Mr. Prouty, perhaps, correctly describes as "conversation."

Nevertheless, there seems to have been a purpose in some quarter to make this informal discussion a matter of public record, without the Interstate Commerce Commission appearing to take the initiative. This is how it was accomplished:

[Congressional Record of May 2, 1898, p. 4931.]

Railway rates.—Mr. Tillman submitted the following resolution, which was considered by unanimous consent and agreed to:

"*Resolved*, That the Interstate Commerce Commission be, and is hereby, directed to transmit to the Senate a copy of so much of the testimony given before the commission on December 6, 1897, by Milton H. Smith, president of the Louisville & Nashville Railroad Co., as relates to railway rates and charges, free transportation over railways, and the regulation of railways."

[Congressional Record of May 6, 1898, p. 5196.]

Railway rates.—The President pro tempore laid before the Senate a communication from the Interstate Commerce Commission transmitting, in response to a resolution of the 2d instant, so much of the testimony given before the commission on December 6, 1897, by Milton H. Smith, president of the Louisville & Nashville Railroad Co., as relates to railway rates and charges, free transportation over railways, and the regulation of railways, which, with the accompanying papers, was referred to the Committee on Interstate Commerce and ordered to be printed.

See Senate Document No. 259, Fifty-fifth Congress, second session.

Who prompted Mr. Tillman's resolution I do not know. But, since Mr. Prouty has on more than one occasion made an unfair and misleading use of some remarks made by me in the course of that discussion, it is fair to presume that the "conversation" was made a part of the public record to enable some of the commission to utilize it in their arguments for enlargement of the commission's powers. It should be said that, at the outset, when I thought the investigation was to relate exclusively to the matter which the commission was supposed to be investigating, and that it was to be simply a part of the records of that investigation on file in the commission's office, I requested the privilege of being allowed to correct the transcript of my testimony, and did correct it; but I observe that the corrected copy was not used in the public record, upon which record Mr. Prouty relies.

For the information of your committee I attach hereto (Exhibit A) a copy of the full report of the evidence given by me, from which Commissioner Prouty pretends to quote (see p. 31). By reading the context, you will see that I was being questioned as to the reasonableness of rates; and that I was contending that the parties directly interested, namely, the shipper, or the man who pays the freight, and the carrier, who receives it, should be left to adjust the matter to their mutual satisfaction. And I further insisted that, as a matter of fact, there were no unreasonable rates on the Louisville & Nashville Railroad, and that there was no reason whatever for giving the commission the rate-making power to correct purely theoretical evils.

I make the following quotation, it being that portion of the evidence to which Commissioner Prouty evidently refers:

"Commissioner PROUTY. Now, let us get back to our question. That is the foundation of it all. Here are these two points connected by your line of railroad and connected by no other line. You say that the Government ought to leave you and the shipper who resides at those places free to contract. Now, that shipper is obliged to pay you whatever you charge?

"Mr. SMITH. No.

"Commissioner PROUTY. What could he do?

"Mr. SMITH. He could walk. He can do as he did before he had the railroad, as thousands now do who have not railroads.

"Commissioner PROUTY. He can hire a horse and drive.

"Mr. SMITH. Yes, sir; the fact that the rates between these two points are one-third of what they were originally on freight, and one-tenth of what it would cost him if he did not have the road and used his own power, or hired some animal as he used to, is evidence of the reasonableness of the rate.

"Commissioner PROUTY. Suppose, instead of wanting to walk or do anything of that sort, he concluded to build a railroad like yours, he could not do that without the consent of the State?

"Mr. SMITH. One man could not, but these communities can. They have built the Louisville & Nashville Railroad."

By referring to page 29 it will be seen that Commissioner Prouty was discussing rates between "some place in Illinois with some place in the State of Tennessee, between which two places there is no other railroad." As a matter of fact, persons on the Louisville & Nashville Railroad between such points do not have to walk nor do they have to hire a horse and drive, unless they prefer those modes of transportation. The case was wholly supposititious; it had no foundation in fact. The maximum rate for any distance for the transportation of passengers between such points is 3 cents per mile, with reduced rates for mileage, commutation, family, and school tickets; for political, religious, or commercial conventions; for expositions, circuses, and fairs. What Commissioner Prouty by his questions was trying to show was that there being no direct competition between the two supposed points, the Louisville & Nashville Railroad Co. could charge unreasonable rates. I made a very sufficient answer to so needless a question; but I might properly have added that the Louisville & Nashville Railroad Co.'s charges were limited by its charter; that were they not so limited, any attempt on its part to charge unreasonable rates would necessarily result in restricting, if not in destroying, its traffic, and in that way defeat the purpose for which the corporation was created and the railroad constructed. Indeed it is trite to say that the only way in which a carrier can be successful is by adjusting rates so as to encourage and promote its traffic; yet some persons, who ought to know better, seem to be of the opinion that railway managers are seeking to discourage alike patrons and business by exacting unreasonable rates, and so really to be endeavoring to destroy the value of the property they are administering. Commissioner Prouty may be an excellent type of Interstate Commerce Commissioner—

He made that remark to me, and I was trying to get back at him.

I gather so much from his argument before your committee; but he is also an illustration of how a man may hold such a position and yet distort facts in order to make a small point in a controversy.

My views of the matter were summed up on page 39, in answer to a question by Commissioner Knapp, where I stated in effect that there were no unreasonable rates, and that the mere possibility of an isolated case of an unreasonable rate was no reason for adopting the theory of paternalism and attempting to use the whole power of the Government to regulate the vast commerce of the whole United States and the rates for its transportation.

It seems impossible for Mr. Prouty to be ingenuous and fair, but he should avoid paltry perversions. In the quotation from his statement before the committee, heretofore given, he says:

"I have been told by a judge of the circuit court of appeals before whom the claim was made, that the attorney of Mr. Smith insisted that the only test of a reasonable freight rate was the price at which that freight could be hauled by a team; that the Louisville & Nashville Railroad might charge at its discretion any price above that for the transportation of freight."

To one less devoid of all judicial poise, it would be unfair to base a statement of what I considered to be the sole criterion of reasonable rates on the casual remark of some gentleman as to what he had understood the attorney of the Louisville & Nashville Railroad Co. to say. I am quite sure that no attorney of the Louisville & Nashville Railroad Co. ever stated the proposition that the reasonableness of rates of rail transportation should be determined solely by comparison with those charged for transportation by wagon; and I take it that Mr. Prouty does not believe that the attorney he has in mind made any such claim. But it is useless, perhaps, to expect that Mr. Prouty, who can suppress much of the real meaning of published testimony, shall not attach to words spoken in private conversation any meaning that may suit his purpose. In commenting once before upon this misleading use which Mr. Prouty made of my testimony before the commission, I thus expressed my sense of his unfairness:

"This very investigation emphasized in a striking way what seems to me to be the complete lack of judicial temper on the part of the commission. The commission was sitting for the purpose of discharging a highly important and responsible statutory duty relating to automatic couplers and air brakes; yet the minds of the commission were so bent upon obtaining greater power, that they could not resist the temptation to branch off into a lengthy discussion upon that topic, stating in the form of questions every argument which they could conceive to sustain the propriety of their demands. It may be doubted whether a tribunal, incapable, under such circumstances, of adhering to the serious work before it, and indulging instead in lengthy arguments with a witness upon the policy of the extensive legislation desired by the tribunal on an entirely different matter, can safely be made the repository of the almost unlimited powers which are now sought."

I see no reason to modify my opinion of the commission; but rather find in Mr. Prouty's recent utterances strong grounds for deeming it even less competent than I then thought it, to perform the extraordinary functions it asks. And this question must arise in every thoughtful mind: "Is it wise that the Government intrust a man or body of men, capable of such petty and dishonest misrepresentations, with unlimited control over the enormous material interests of the country that is involved in the power to adjust the rates of the rail carriers, and with the judicial power to enforce rates so fixed; and that, too, in addition to the powers given by the present act, of informer, complainant, prosecutor, and general regulator of carriers?"

I respectfully request that this communication, with accompanying paper, be made a part of the record of the hearings on Senate bill No. 1439 before your committee.

Very respectfully.

Mr. Folk. Are those your views to-day?

Mr. Smith. Sir?

Mr. Folk. Are the views expressed in that letter your views at the present time?

Mr. Smith. No, sir; I have already expressed entirely different views.

Mr. Folk. Then you mean to modify the views as expressed in that letter?

Mr. Smith. That letter was written in 1900.

Mr. Folk. And you mean to modify the views as expressed in that letter?

Mr. Smith. I have already modified them in an answer I gave to your previous question.

Mr. Folk. You say the shipper has a right to a reasonable rate?

Mr. Smith. And the carrier.

Mr. Folk. And the carrier?

Mr. SMITH. Yes, sir.

Mr. FOLK. If the funds of the railroad are dissipated in reckless investments or in political campaign contributions, how can the shipper secure a reasonable rate?

Mr. SMITH. There is no connection between the two matters; that is, the question of the adjustment of reasonable rates and the dissipation of the funds of the company.

Mr. FOLK. Suppose the Louisville & Nashville Railroad Co. were to give to the Republican campaign fund or the Democratic campaign fund the sum of $500,000; would that affect the rates in any way?

Mr. SMITH. Not in the slightest.

Mr. FOLK. Suppose it were to make a political campaign contribution of $5,000,000.

Mr. SMITH. Not the slightest.

Mr. FOLK. Suppose it should make a contribution of $20,000,000.

Mr. SMITH. Not the slightest. It has nothing to do with the adjustment of rates.

Mr. FOLK. You think a railroad could earn a fair return at the same rates, regardless of how it uses the funds so acquired?

Mr. SMITH. The adjustment of rates is governed by conditions entirely independent of the revenues of a railroad company. The adjustment of rates of bankrupt roads that are operated by receivers of courts are handled in the same way and arrived at in the same manner as they are by the solvent roads.

Mr. FOLK. For instance, Mr. Smith, how much did the Louisville & Nashville Railroad Co. contribute last year for political campaign purposes?

Mr. SMITH. I don't know.

Mr. FOLK. Do you know how much it contributed in 1914?

Mr. SMITH. No, sir.

Mr. JOUETT. We object to that question, if your honor please, as being wholly irrelevant and beyond the jurisdiction of the commission to inquire.

Mr. SMITH. I don't know.

Mr. FOLK. Do you know how much the Louisville & Nashville Railroad Co. contributed for campaign purposes in 1913 or in 1912?

Mr. JOUETT. We make the same objection to that, your honor.

Mr. SMITH. I do not know that they contributed anything.

Chairman MEYER. These questions fall within the scope of the investigation, as you know, Mr. Jouett, and the witness is instructed to answer.

Mr. JOUETT. Your honor, we object to any questions relating to this subject matter and advise the witness not to answer for the reasons stated in the former hearing.

Mr. FOLK. Is it the policy of the Louisville & Nashville Railroad Co. to make political campaign contributions, if you know, Mr. Smith?

Mr. JOUETT. We make the same objection, your honor, and advise the witness not to answer the question.

Mr. SMITH. On advice of counsel I decline to answer.

Chairman MEYER. And the ruling of the commission is that the witness is instructed to answer.

Mr. SMITH. Sir?

Chairman **Meyer**. I say the ruling of the commission is that you are instructed to answer.

Mr. **Folk**. I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Co. expended in the State of Tennessee for political campaign purposes during the year 1915 and charged on the books of that carrier to operating expenses?

Mr. **Jouett**. Your honor, we make the same objection there and give the witness the same advice.

Chairman **Meyer**. And the same ruling on the part of the commission.

Mr. **Smith**. I decline to answer.

Mr. **Folk**. You decline to answer?

Mr. **Smith**. On advice of counsel I decline to answer.

Mr. **Folk**. Can you tell us what funds of the Louisville & Nashville Railroad Co. were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?

Mr. **Jouett**. We make the same objection and advise the witness not to answer.

Chairman **Meyer**. The same ruling on the part of the commission.

Mr. **Smith**. On advice of counsel I decline to answer.

Mr. **Folk**. I will ask you to state, of your own personal knowledge, if you know, what funds of the Louisville & Nashville Railroad have been expended for political campaign purposes in the State of Kentucky during the year 1912, during the year 1913, and during the year 1914 and charged on the books of that carrier to operating expenses, to construction, or to legal expenses.

Mr. **Jouett**. We make the same objection, you honor, and give the witness the same advice.

Chairman **Meyer**. And the same instruction to the witness to answer the question.

Mr. **Smith**. On the advice of counsel I decline to answer that question.

Mr. **Folk**. I will ask you to state, Mr. Smith, of your own knowledge, if you know whether it is the policy of the Louisville & Nashville Railroad to make political campaign contributions and to conceal the contributions so made by charging the contributions on the books of that carrier to expense account, construction account, operating expenses, or to legal expenses?

Mr. **Jouett**. We make the same objection there, your honor, and advise the witness not to answer.

Chairman **Meyer**. The same ruling.

Mr. **Smith**. On the advice of counsel I decline to answer.

Mr. **Folk**. I will ask you, Mr. Smith, to state of your own knowledge, if you know, what funds of the Louisville & Nashville Railroad have been expended, if any, in the State of Georgia for political campaign purposes during the years 1912, 1913, 1914, or 1915——

Mr. **Jouett**. We make the same objection.

Mr. **Folk**. Wait a minute, until I have finished the question—and charged on the books of that carrier either to operating expenses, expense account, construction account, or legal expenses?

Mr. **Jouett**. We make the same objection, and give the witness the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. On advice of counsel I decline to answer.

Mr. FOLK. You do not think, then, Mr. Smith, it makes any difference to the public, or that the public has any concern in the matter, how the railroad expends its funds acquired by and through the transportation of passengers and of freight, do you?

Mr. JOUETT. We make the same objection, and give the same advice to the witness.

Mr. FOLK. I am not asking about campaign contributions.

Mr. JOUETT. It covers it in the same way.

Chairman MEYER. The same ruling.

Mr. SMITH. On advice of counsel I decline to answer.

Mr. FOLK. Will you state, Mr. Smith, whether a railroad rate is based on or there is any relation between a rate and income and expenditure?

Mr. SMITH. The adjustment of rates for the transportation of property is, on most articles, a very simple matter. First, we have the limitations in our charter. Then the rate charged on the transportation of many articles is an almost immaterial matter to the consumer, because the transportation charge forms such a small part of the value of the property to the consumer which he has to pay that it is almost a negligible quantity. When it comes to the coarser or heavier articles for which the transportation charge forms a much larger part, and a very important part, of the value of the property to the consumer, it has to be carefully considered, and the shipper or consumer must be consulted, and they must endeavor to adjust the rates on such traffic so that it can be moved not only in direct competition with other transportation lines, but in competition of product with product—the most competitive of competition—and the question may arise as to what, under those circumstances, the traffic will bear, which we hear so much about.

As an illustration that comes to me just now, only week before last (and it is not the first visit I have had from the gentleman either) a representative of a large industry came to me and proposed to give us 1,500,000 tons per annum, which would be a continuous arrangement provided we would make certain rates. It was the transportation of coal from eastern Kentucky to Chicago by way of the Lakes, and Toledo especially. After considering that very carefully—it was a big temptation, a million and a half tons of coal per car of 55 tons; that is, we could carry 55 tons in the car, with all of those enormous earnings per train over that part of the line where we have favorable grades and can use big engines, yet the rate was so low, that is, the rate made by competing lines from Virginia and West Virginia and other points, was so low that notwithstanding the temptation for the large business I declined positively to make the rate. It was a case like that of the old apple woman who sold her apples at less than cost. When asked how she could afford to do it, she said it was because she sold so many. A million and a half tons sounds big, but in order to get that million and a half tons you have got to waste your revenue derived from other sources and let it go by. The coal will stay in the ground perhaps some years longer and may be produced later. It is conditions that govern the rate, and not whether the railroad is prosperous, whether it is bankrupt, or operating under receivers.

Mr. **Folk.** So your idea is it makes no difference what is done with the funds of a railroad by the president of that railroad in so far as rates are concerned?

Mr. **Smith.** It has nothing in the world to do with it.

Mr. **Folk.** He may give them all for political campaign contributions?

Mr. **Smith.** He may give some of it to the stockholders. In a great many cases, especially to-day, stockholders are not being considered, and it is a question whether the bondholders will get anything or not; and yet that has no effect whatever on the rates those roads operated by receivers are making.

Mr. **Folk.** You say that operating expenses are not an element in determining or making rates?

Mr. **Smith.** To a limited extent, as I just explained. When this million and a half tons was offered to me, I made the best calculation I could on the cost—on the additional cost, even. By "additional cost" I mean the additional cost that would be incurred in moving that additional traffic, eliminating certain expenses that will go on anyway whether we move the traffic or not. When I found that the rate which it would be necessary to make in order to secure that traffic would not pay the amount of the expenses, I declined it. To that extent expenses have something to do, or should have something to do, with how much you can afford to transport the traffic for.

Mr. **Folk.** Suppose you make a political campaign contribution of $1,000,000 in a certain year and charge that $1,000,000 up to operating expenses, do you think that would be a proper charge?

Mr. **Stone.** We object to that question.

Mr. **Jouett.** Yes; we object to the question, your honor, and give the witness the same advice as before?

Chairman **Meyer.** And the witness is instructed to answer.

Mr. **Smith.** By advice of counsel I decline to answer.

Mr. **Folk.** Mr. Smith, do you have knowledge of expenditures by the Louisville & Nashville Railroad Co. for matters the nature of which is not disclosed to the stockholders of the Louisville & Nashville Railroad Co. or recorded in the books of accounts of that company?

Mr. **Jouett.** We object to that question also, and give the witness the same advice. It bears upon this general subject.

Chairman **Meyer.** The witness is instructed to answer.

Mr. **Smith.** By advice of counsel I decline to answer.

Mr. **Folk.** So you think the gross income of a railroad has nothing to do with the rates?

Mr. **Smith.** The gross income has nothing whatever to do with the adjustment of rates. You have got to have an adjustment of rates that will secure traffic or you will not have any gross income.

Mr. **Folk.** Isn't it true, Mr. Smith, in the Western Rate Advance case, the carriers asked for an increase in rates, and the commission allowed an increase in rates, on the ground that the carriers' gross income was not sufficiently in excess of expenses to pay a return upon the property of the carriers?

Mr. **Smith.** That is a matter that the commission may consider, but when it comes to an adjustment of the rates by the carrier, the representative of the carrier must necessarily consider whether the increased rates will secure additional traffic at the increased rates, or whether it will decrease the traffic. If he finds it will decrease the traffic he will not increase the rates.

Chairman **Meyer.** Gov. Folk, perhaps I ought to remind you that there were different reasons given by the commission.

Mr. **Folk.** Yes; there were, your honor. I am asking the witness for this particular one.

It has been your policy, Mr. Smith, as president of the Louisville & Nashville Railroad Co. to suppress competition wherever you could, has it not?

Mr. **Smith.** No, sir; no such policy. We have endeavored to compete vigorously wherever we had to.

Mr. **Folk.** You have endeavored to compete vigorously?

Mr. **Smith.** Yes; wherever we had to compete.

Mr. **Folk.** But you did not if you could get out of it, did you?

Mr. **Smith.** Sir?

Mr. **Folk.** I say, you did not compete if you could destroy your competitor in any way, did you?

Mr. **Smith.** We did not compete except product with product, where we were the only lines or the only connection.

Mr. **Folk.** Did you know Mr. Samuel Spencer, of the Southern—the late Samuel Spencer?

Mr. **Smith.** Deceased?

Mr. **Folk.** Yes.

Mr. **Smith.** Very well.

Mr. **Folk.** Do you remember a meeting you had with him at Kenesaw, Ga., in 1894?

Mr. **Smith.** Very well.

Mr. **Folk.** When you and he agreed to divide up this domain between you. Do you remember that?

Mr. **Jouett.** Your honor, we wish to object to that line of testimony as not bearing properly upon any legitimate issue in this hearing, but we do not advise the witness not to answer the question. You may go ahead, Mr. Smith.

Mr. **Folk.** In this letter to some one down in Alabama you adopted the pen name of "Irulus." Where did you get that name?

Mr. **Smith.** Where did I get the name "Irulus"?

Mr. **Folk.** Yes. Did you mean "I rule you"?

Mr. **Smith.** When I wrote that letter I was spending a little time with my family in northern Michigan.

Mr. **Folk.** It is dated in 1912.

Mr. **Smith.** Yes; it was in the summer time.

Mr. **Folk.** Exactly.

Mr. **Smith.** I think it was written from Charlevoix, Mich. Gov. Comer, of Alabama, was making an active and vigorous campaign, based mainly on a denunciation of railways, and especially the Louisville & Nashville Railroad Co. My attention was called to some of his erroneous statements, which he was not only making a noise about, delivering verbally, but printing and distributing over the State. I, having a little leisure time on my hands, wrote some articles and sent down to our people to have them published in the Alabama papers, for which we expected to pay. I do not know how I came to write about "Irulus," but that was the name of my father.

Mr. **Folk.** That was the name of your father?

Mr. SMITH. That was the name of my father, and he was the only man I ever had known of that had that name. I do not know how it happened to occur to me. These are some of the punctures which I suggested be applied to some of Gov. Comer's remarks.

Mr. FOLK. We will take that matter up later, Mr. Smith.

Mr. SMITH. I would like to take it up right now in answer to your question.

Mr. FOLK. I asked you how you came to adopt the name "Irulus," and you said it was the name of your father.

Mr. SMITH. Much humor has been expressed in the Nashville papers about that name "Irulus," and I would like to show you what I was writing about.

Mr. FOLK. We will take that up later under the head of "Alabama."

Mr. JOUETT. I think it is proper to come in now, Gov. Folk.

Mr. FOLK. I have only asked as to the name "Irulus."

Chairman MEYER. If the witness desires to explain the use of that name, he ought to have that opportunity, it seems to me.

Mr. FOLK. Go ahead, then, Mr. Smith.

Mr. SMITH. Ex-Gov. Comer, in his address at Greenville, Ala., on August 30, commented favorably upon the enactment by the State of Georgia creating a railroad commission with mandatory powers to fix rates for the transportation of persons and property by the steam railroads in that State and commended Tombs, Wallace, and Trammell for the part they took in securing the enactment by the legislature and in administering its provisions. He also vehemently recited the many advantages accruing to the citizens of Georgia by the operation of the law, and he does this regardless of the fact that his attention has been called to the disastrous results to railroads and the almost total suspension of investment of foreign capital in building new railroads and the disastrous result to local investors who have ventured to so invest in a limited way since the commission law was enacted in 1879.

Every railroad in the State of Georgia has been bankrupt one or more times, except the Georgia Railroad, the Atlanta & West Point, and the Western & Atlantic. The Georgia Railroad and the minority stock owned by that company in the Atlanta & West Point was leased by the Georgia Central and the Louisville & Nashville, and the Western & Atlantic leased by a lessee company, and on expiration of the first lease was leased by the Nashville, Chattanooga & St. Louis Railway Co.

The lease of the Georgia Railroad resulted in heavy losses to the lessees and was part of the financial condition that caused the bankruptcy of the Georgia Central, resulting in heavy losses to many of the citizens of Georgia who were owners of stock in that company. The failure of the Georgia Central threw the entire burden of the Georgia Railroad lease on the Louisville & Nashville, and it has been a heavy one. No return has ever been received, and large sums have been advanced to provide needed increased facilities and equipment.

With two exceptions, all of the railroads built in Georgia since 1879 have been built with local capital, nearly all of which has been lost through subsequent foreclosure, and in many instances the creditors were losers, although acquiring ownership through bankruptcy proceedings. Between January 1, 1880, and December 31, 1906, 45 of the railroad companies operating in the State of Georgia passed into bankruptcy, involving a capital of $79,585,102 with a bonded debt of $78,889,154. During that period 6,236 miles of railroad were at one time or another placed in the hands of receivers. This does not represent the total mileage of railroads within the State of Georgia that were in the hands of receivers at any one time, it being largely in excess of the average mileage within the State during such period, but it is the total of the miles of railroad passing into insolvency, some twice, some even three or four times. Following is a list of the 45 corporations, all bankrupt:

Abbeville & Waycross.
Atlanta & Florida Railroad.
Atlanta & Florida Railway.
Atlantic Short Line.
Augusta, Gibson & Sandersville.
Augusta Southern.
Brunswick & Albany Railroad.
Blue Ridge & Atlantic.
Boston & Albany (Georgia).
Brunswick & Birmingham Railroad.
Central Railroad & Banking Co. of Georgia.
Chattanooga, Rome & Columbus.
Chattanooga Southern.
Chickamauga & Durham.
Columbus Southern.
Covington & Macon (1887).
Covington & Macon (1890).
Cuyler & Woodburn.
Dover & Statesboro.
East & West of Alabama.
East Tennessee, Virginia & Georgia Railroad.
East Tennessee, Virginia & Georgia Railway.
Empire & Dublin.
Gainesville, Jefferson & Southern.
Georgia Midland & Gulf.
Georgia Pacific.
Georgia Southern & Florida.
Hartwell.
Indian Springs & Flovilla.
Macon & Atlantic.
Macon & Birmingham.
Macon & Northern.
Marietta & North Georgia.
Northeastern (Georgia) 1893.
Northeastern (Georgia) 1897.
Port Royal & Augusta.
Port Royal & Western Carolina.
Richmond & West Point Terminal.
Rome & Carrollton.
Savannah & Atlantic.
Savannah & Tybee.
Savannah & Western.
Savannah, Americus & Montgomery.
Savannah, Griffin & Northern Alabama.
Sylvania Railroad.

The only two instances that foreign capital has been invested in building railroads in Georgia since 1879 are the building of Georgia, Carolina & Northern Railroad and connecting line to Birmingham, Ala., now part of the Seaboard Air Line System, and the Atlanta, Birmingham & Atlantic Railroad, neither of which has been successful financially, the Seaboard having been reorganized and the A., B. & A. now being operated by receivers.

May not the inference be fairly drawn that the enactment, by the Legislature of Georgia, of the law creating a commission with mandatory powers prevented foreign capital from being invested in securities of railroads built or to be built in the State, thus forcing its citizens to furnish capital which was lost, and that the rates and regulations enforced by the commission had much to do with, if they did not cause, the disastrous result of operating the local roads that were built with local capital?

That is puncture No. 1.

Mr. Folk. Those letters are already in the record, and you can just consider them in, if you wish, Mr. Smith.

Mr. Jouett. They are not in the record, Governor.

Mr. Smith. Ex-Gov. Comber, in an address at Greenville, Ala., on August 30, with characteristic mendacity, asserted that the present capital stock of the Louisville & Nashville Railroad Co.

amounting to $60,000,000, "more than half of which is pure water," and asserts that the actual value is $30,000,000. He did this, although at a hearing before him, as president of the Railroad Commission of Alabama, in 1905, when he made a similar charge, it was explained to his then apparent satisfaction that there was no water in the capital stock of the Louisville & Nashville Railroad Co. During the existence of the company it has many times needed additional capital, and the stockholders have caused the net earnings to be applied to furnishing such capital by foregoing dividends, for which they were in part reimbursed by an issue of stock. Instead of selling stock to the public at par, which could not have been done, the stockholders took stock at par in lieu of dividends.

In the same address he, with characteristic stupidity, denounced the management of the Louisville & Nashville Railroad Co. for devoting a part of its net earnings to paying for betterments and additions to its property—creating needed additional facilities—instead of paying the entire net earnings to the stockholders. Although, according to his own allegations, the management has appropriated from net earnings amounts many times greater than the amount of the stock dividend declared many years ago, he yet affirms that more than one-half the present capital stock is water. An impossible man. A disordered mind. He will not be placated.

Puncture No. 2:

Paragraph No. 3. Ex-Gov. Comer, in an address at Greenville, Ala., on August 30 commented with evident satisfaction upon the rebuke administered to Milton H. Smith, president of the Louisville & Nashville and South & North Alabama Railroads, who, at a hearing before the railroad commission at which he presided, he asserts was offensively dictatorial.

The hearings by the commission of which he was president were convened on complaint of a shipper of fertilizer, and lasted three days in the month of April and three days in the month of May, 1905. Fortunately, the proceedings were transcribed by the official stenographer of the commission, and were printed and bound, making a book of over 700 pages. A perusal of that book will show that instead of performing the duties of presiding officer, judge, to ascertain the merits of a contention between citizens of Alabama, he ranted and raved like a maniac, denounced one of the parties to the contention continually, was presiding officer, attorney for one side, witness for one side, in fact conducted himself in such a manner as would have resulted in his incarceration had he so conducted himself in any organized court of justice. During the entire six days he had before him representatives of all of the railways in Alabama, and a perusal of the printed proceedings will show that throughout the entire six days he was treated with respect, and that all who testified patiently endeavored to elucidate the matters under consideration, patiently tried to correct the innumerable erroneous statements made by him. They did this from respect to his position as a representative of the Commonwealth of Alabama. At the same time all present, including the two associate commissioners, were humiliated—made ashamed—that the State was disgraced by the performance of one with a mind diseased.

No. 4. Ex-Gov. Comer, in his Greenville address, expatiates at length on the alleged fact that representatives of the railroads have procured the publication of articles tending to enlighten those who may read them on the subject of the contention between the State and said railroads, the contention on the part of the State having been largely initiated and prosecuted by his efforts. Also, such publications have exposed the falsity of his many libelous allegations.

He emits his falsehoods and causes them to be widely published, and is furious because the press that may have published his emanations as matter of political interest, without charge, receive in some instances remuneration for publishing matter controverting his baseless charges.

He would have the railroads "roped and tied"—rendered helpless—that his shameful and baseless falsehoods may not be exposed. In fact, he would prohibit everyone who may differ from him from refuting the ravings of his disordered mind.

His efforts to prevent exposition of his fallacious utterances will prove impotent—the citizens of Alabama will be fully advised of his heresies.

No. 5. Ex-Gov. Comer in his Greenville address argues vehemently that because the operations of the Louisville & Nashville Railroad Co. during the past four years have resulted favorably to the stockholders, the State of Alabama should have been permitted to force that company to transport property and persons between points within the State—intrastate traffic—which was being moved at a very small if any profit at a still lower rate or at a loss. The State of Alabama can not justly require that the earnings of a railroad in other States, or earnings derived from interstate traffic—that is, traffic passing between points in two or more States—be appropriated to pay losses resulting from moving traffic between points within the State at unremunerative rates. Fortunately for all citizens, the laws of the country prohibit such action by any State, and the law is so construed and enforced by the courts. Such is the law, and it ought to be the law. If the State of Alabama can require the carriers to transport persons and property between points within the State at a loss, Tennessee, Kentucky, and other States in which the Louisville & Nashville Ralroad Co. operates, may do so, resulting in general and sweeping reductions of all intrastate rates, which, in turn, will force a reduction of interstate rates, when bankruptcy may result.

The attempt by the State of Alabama to inaugurate such rate reduction was dishonest, the consummation having fortunately been prevented by the courts. It is the character of dishonesty preached by the ex-governor by word of mouth and by example. It is the same brand of dishonesty practiced by a merchant who causes flour to be shipped in sacks marked corn meal because the rate on corn meal is less than the rate on flour. It is the same brand of dishonesty that causes a manufacturer to solicit and accept a rebate on shipments of machinery, thereby hoping to secure a more favorable rate of transportation than his competitor. Both transactions were dishonest and illegal, and both are specifically made crimes—penal offenses—by the act to regulate commerce.

Is one who advocates such dishonesty a desirable leader of the people, a desirable teacher and model of the youths of a great State?

Extract from address of B. B. Comer, delivered at Gaines Chapel, near Attalla, Ala., July 24, 1913:

> But let me hurry up with this talk. What we did in Alabama, or tried to do in Alabama, Minnesota was also trying to do. I was Gov. Comer; in Minnesota Gov. Johnson was the governor. Gov. Johnson was thought to be big enough to be Democratic President, and he was the man who was fighting these things through in Minnesota, but he was fighting for a 2-cent passenger fare instead of a 2½-cent fare; the Missouri governor was fighting for it, and Gov. Hadley was thought big enough to be President on the Republican side. Gov. Hadley fought for a 2-cent passenger rate and a lower freight rate.

It is known of all who have had cause to consider the matter that Comer's activities are not prompted by a desire to promote the interests of his fellow citizens, but by his insane desire for political preferment and notoriety.

In 1907, while governor, his antics were distressing and he acted like a lunatic when the governor of North Carolina had apparently accomplished something that he thought he ought to have led in: and he called his attorneys to Montgomery for conference and "spanked" them thoroughly for not telling him that he could give the railroads as much trouble in Alabama as the governor of North Carolina was giving them in that State, and plainly showed his chagrin that North Carolina's governor had become a national character and was receiving "glory" that he (Comer) felt belonged to himself.

In his speech delivered at Gaines Chapel, near Attalla, on July 24, 1913, Comer said:

> * * * What we did in Alabama, or tried to do in Alabama, Minnesota was also trying to do. I was Gov. Comer; in Minnesota Gov. Johnson was the governor. Gov. Johnson was thought to be big enough to be Democratic President, and he was then man who was fighting these things through in Minnesota, but he was fighting for a 2-cent passenger fare instead of a 2½-cent fare; the Missouri governor was fighting for it, and Gov. Hadley was thought big enough to be President on the Republican side. Gov. Hadley fought for a 2-cent passenger rate and a lower freight rate.

Does he want to be a candidate for President of the United States?

There is another thing I would like to put in here in connection with that same campaign. This article or paper was distributed to the voters of Alabama throughout a larger part of the State; I think to all except two or three counties. The article is a powerful weapon that may be used to influence public opinion. It is an attempt to ridicule. The comments on the "Irulus" letter show that it is an attempt to ridicule. This was published as ridiculing Gov. Comer. It is entitled "Comeritus—A Jim-Dandy One-Man Comer-dy. Not by Williams Shakespeare."

COMERITUS—A JIM-DANDY ONE-MAN COMER-DY.

Dramatis Personae: Bambastes Braggadocio Comeritus, ex-Office Holder. Chronic Candidate, Sworn Enemy of Railroads, Highcockalorum and Advisor General.

Ditto, Himself.

Ditto, Etc., Himself.

Scene.—Comeritus' private chamber, a well-furnished apartment. The walls are ornamented with portraits of himself, press notices of his speeches, and trophies of his campaigns. A large mirror, reaching from ceiling to floor, adorns one wall. A table on which are manuscripts, pamphlets, railroad rate lists, a jar of taffy, a carboy of vitriol, and a bucket of water with a dipper in it.

(Comeritus stands before the mirror, posing and gesticulating as he soliloquizes.)

If ever man had cause to boast, 'tis I;
For ne'er, before his battles won, had man
More cause to fear. The Fates have favored me
To some purport, but not to my full liking.
My fond ambition's goal is the limelight glare
And exercise of constant public function,
In which to exploit myself and court applause
And, posing as the people's dearest friend,
Hold power to carry out my fell design
To wreck upon the railroads rank revenge.

Chairman **Meyer.** That is all very entertaining, Mr. Smith, but would you mind putting that in as an exhibit? I am sure we will be glad to read it.

Mr. **Smith.** Very well.

(The pamphlet referred to was thereupon marked by the stenographer "Smith Exhibit No. 1, received in evidence May 4, 1916," and the same is forwarded herewith.)

Mr. **Folk.** We will take up this Comer matter later. Let us speak now of this meeting between you and Mr. Spencer, at Kenesaw, Ga., October 28, 1894, at which meeting you and Mr. Spencer agreed to divide up the domain between you, and to dispose of all railroads that you could not control. Tell us about that.

Mr. **Stone.** We object to counsel's question as embodying his own testimony, and as being something as to which there has been no testimony by anybody in this record so far.

Mr. **Folk.** I am simply asking the witness to tell us if that is correct.

Mr. **Stone.** It is understood, your honor, that we are objecting to this line of testimony. Mr. Spencer was president of the Southern Railway at that time, but he is now dead. He can not speak for himself, and I do not see what possible bearing it can have upon this case.

Mr. **Jouett.** We will object to the question as indicating our view of its incompetency, but we will not instruct him not to answer it, because he says that he wants to answer it.

Chairman **Meyers.** Your objections stand upon the record; but with respect to the question, as I understand it, would it not go to that part or paragraph of the order of the commission authorizing this investigation, which goes to the relationship of these carriers to one another?

Mr. **Jouett.** I do not recall that there was any suggestion about the Southern Railway.

Mr. **Folk.** It is in question No. 10.

Mr. **Jouett.** If it is, Mr. Smith will answer it.

Mr. **Smith.** What was the date of that conference?

Mr. **Folk.** October 28, 1894.

Mr. **Stone.** Not that far back; you mean 1904, do you not?

Mr. **Folk.** No; 1894.

Mr. **Stone.** Twenty-two years ago?

Mr. **Smith.** Twenty-two years ago; yes, sir. A considerable part of the mileage now forming what is known as the Southern Railway was, previous to the Southern Railway organization and the acquiring of those roads, controlled by what was known as the Richmond

& West Point Terminal Co., which went to pieces—went into bankruptcy—and the Southern Railway was created for the purpose of acquiring, and did acquire, control of most of those roads. It did at one time control or own a majority of the stock of what is now the Central Railroad of Georgia until it was acquired, I think, by some legal statute of the State of Georgia, when they gave it up, and a majority of the stock was sold to the Illinois Central. The Southern Railway, as it appeared to me, was organized to take over not only those roads, but it was organized so that it could draw securities so as to acquire additional roads in that territory, and the Louisville & Nashville Railroad Co. was interested to the extent that that would tend to stabilize rates. The fewer the parties to the agreement to maintain rates the easier it would be to secure an adjustment and maintenance of rates. The greater the number of parties, especially short lines who may be disturbers, the harder it is to maintain the rates. It renders the maintenance of rates more difficult.

Mr. FOLK. What was the occasion of your meeting at Kenesaw at that time?

Mr. SMITH. I met Mr. Spencer, whom I had known for years, as we were both employed on the Baltimore & Ohio Railroad together, to consider that. I was to do what I could, which will prove afterwards to be practically nothing, to aid his plan of acquiring these various railroads. The result was that he got what he wanted and all that he wanted, and the Louisville & Nashville didn't get anything. That was the result of that conference.

Mr. FOLK. After that conference——

Mr. STONE (interposing). Let him finish his answer, Gov. Folk.

Mr. FOLK. I thought he had finished. Have you finished?

Mr. SMITH. Yes.

Mr. FOLK. After that conference between you and Mr. Spencer you had considerable correspondence with Mr. Spencer in relation to the distribution of this territory under that agreement, did you not?

Mr. SMITH. There was no division of territory, and I do not know that we had any correspondence on the subject. I don't see why there should have been, but there may have been. He, as representing the Southern Railway, proceeded to complete the organization of the Southern Railway, and he did not in any way interfere with the plans or the policy of the Louisville & Nashville Railroad Co., because the Louisville & Nashville Railroad Co. did not want any of those roads.

Mr. FOLK. Did you ever hear of the conqueror Pizarro?

Mr. SMITH. Yes; Pizarro and Cortez.

Mr. FOLK. And you were Pizarro, were you not?

Mr. SMITH. I didn't get even a piece of the Isthmus of Panama.

Mr. FOLK. But you were Pizarro, were you not?

Mr. SMITH. I wasn't anything. I was a nonenity in the transactions.

Mr. FOLK. Did you designate yourself as "Pizarro" and Mr. Spencer as "Cortez"?

Mr. SMITH. Don't give me credit for any such humor as that. That originated with a lawyer in Louisville, a Mr. George Davie, who used that in some way. I never heard of it until after that.

Mr. **Folk.** For instance, in the letter written by yourself on February 22, 1896, to Mr. Samuel Spencer, it begins this way——

Mr. **Jouett.** We object. We say the letter ought to be submitted to the witness for him to see what he is testifying to.

Mr. **Folk.** I will ask as to just this one sentence and then I will show him the letter.

Mr. **Jouett.** I think he ought to be shown the letter first, and if it is there he will identify the letter.

Mr. **Folk.** I am not asking as to the whole letter now, but as to this statement regarding Pizarro and Cortez.

Mr. **Jouett.** We object to it unless the letter is presented to the witness. It is the only fair and proper way to conduct the examination.

Mr. **Folk.** I think I have the right to ask him in reference to this Cortez and Pizarro matter, as to this statement that is made there.

Mr. **Smith.** That is great business for the United States Government to be in.

Mr. **Jouett.** Our objection is that he is asking about a letter. I do not know what the purpose is or what part they are going to ask him about, but we are entitled to have the letter submitted to the witness.

Chairman **Meyer.** Suppose you let the witness examine the letter.

Mr. **Folk.** Just look at the letter, then, Mr. Smith. Just read that first part of it, Mr. Smith.

Mr. **Jouett.** We ask permission to examine a moment before the witness answers.

Mr. **Folk.** You answer that question as to identifying these letters.

Mr. **Smith.** I have no recollection of that correspondence. I have not read it carefully. I can only assume that it is or may be a correct copy of correspondence in the files.

Mr. **Folk.** As far as you know, it is a correct copy?

Mr. **Smith.** It is a correct copy, as far as I know; yes, sir. Of course, I don't know. I would like to add that that reference to Pizarro and Cortez was simply carrying out the fun that the Louisville & Nashville attorney, Mr. Davie, had started in some litigation. He had used that expression in a speech in court, and it was considered to be amusing, and it was evidently adopted in the correspondence for the supposedly humorous part of it.

Mr. **Folk.** In this letter to Mr. Spencer you say:

> Pizarro. How shall we divide the New World?
>
> Cortez. I will take North America and you can have all of South America, except—and neither of us will do anything to the Isthmus without notice to and cooperation of the other.
>
> Pizarro. While Patagonia is not a very large or important part of the world, yet, perhaps, it is as much as I can tote.

That expressed in a humorous way the relations between the Louisville & Nashville Railroad and the Southern, did it not?

Mr. **Smith.** How is that?

Mr. **Folk.** I say, that expressed in a humorous way the relations between the Louisville & Nashville Railroad Co. and the Southern?

Mr. **Smith.** I will not designate it as humor. It is rot.

Mr. **Folk.** Mr. Spencer, in answer to your letter, began his letter as follows:

> Pizarro. Since our last conversation the division of the new world between us has made some progress.
>
> Cortez. Yes; you seem to have acquired Patagonia, and I have secured a considerable part of North America which touched my former territory, but it

seems to me you have acquired a considerable neck of the Isthmus, which is the connecting link between us. Was it understood that connecting links which touched both of us should be a matter of consultation before acting or not?

Didn't Mr. Spencer thus express to you in a humorous way the relations between the Louisville & Nashville Railroad and the Southern Railway as a result of this conference between yourself and Mr. Spencer at Kenesaw, Ga., on October 28, 1894?

Mr. STONE. Let the witness understand that question. Please read him the question.

(The stenographer thereupon read the pending question as previously recorded.)

Mr. SMITH. It seems to me the whole thing was meaningless rubbish. The result was known. The Louisville & Nashville Railroad Co. did not acquire all the roads within the territory. I think it was understood that we were to jointly acquire the line that was completed between Nashville and Knoxville, but we did not, fortunately, and therefore the Louisville & Nashville Railroad Co. never under these negotiations acquired any railroad mileage in that territory. It must have been a great waste of attempted humor and labor of typewriters, etc., to have concocted all of that stuff.

Chairman MEYER. When you reach a convenient point, Gov. Folk, I think we had better take the usual recess. Perhaps this is as good a point as any. We will take a recess at this point until 2.15 this afternoon.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2.15 o'clock p. m. on the same day.)

AFTER RECESS.

The hearing was resumed at 2 o'clock p. m.

MILTON H. SMITH resumed the stand and testified further as follows:

Mr. FOLK. Mr. Smith, do you know who Pizarro was?

Mr. SMITH. I don't know much about him.

Mr. FOLK. He was the conqueror of Peru. Do you know who Cortez was?

Mr. SMITH. Cortez had something to do with Mexico, hadn't he?

Mr. FOLK. He was the conqueror of Mexico.

Mr. SMITH. Well, I have not read about him for a great many years—probably 40 or 50.

Mr. FOLK. And they met at the Court of Spain along in 1500 and agreed to divide up this new world.

Mr. SMITH. Yes. Well, Prescott knew a great deal more about them than I do.

Mr. FOLK. Now, then we come——

Mr. SMITH. You might incorporate Prescott's history.

Mr. FOLK (continuing). To President Smith of the Louisville & Nashville Railroad——

Mr. SMITH. Yes.

Mr. FOLK (continuing). And President Spencer of the Southern Railway.

Mr. SMITH. Yes.

Mr. Folk. A letter from President Smith of the Louisville & Nashville Railroad to President Spencer of the Southern Railway [reading]:

[Personal and confidential.]

On Pennsylvania Railroad Train, No. 21,
February 22, 1896.

Samuel Spencer, Esq.,
President Southern Railway,
60 Broadway, New York City.

Dear Sir:

Pizarro. How shall we divide the new world?

Cortez. I will take North America and you can have all of South America, except ———, and neither of us will do anything to the Isthmus without notice to and cooperation of the other.

Pizarro. While Patagonia is not a very large or important part of the world, yet, perhaps, it is as much as I can tote.

Refer to typewritten report of our interview at Kenesaw, Ga., on October 28, 1894, and to the interviews and correspondence that have taken place since that date, and to that portion of our interview of this morning relating to the future of certain railroads that are, or may be tributary or competitive with roads controlled by the L. & N. R. R. and the Southern Ry.

May it not be well to review the subject and perhaps make our understandings more specific.

Your affairs, since our interview in October, 1894, progressed with rapidity, and without, so far as I know, encountering serious difficulties. You have acquired the G. S. & F., the Atlanta & Florida, and the Central Railroad has been reorganized in accordance with your plans. I do not recall now what has been done with the Macon & Northern, nor what has been done with the G. M. & G., Macon & B'ham, and one or two other roads, although I believe you told me that your intention was to allow the Macon & B'ham to be abandoned. The Paducah, Tenn. & Alabama and Tenn. Midland Rds. have been disposed of as anticipated. The L. & N. will not compete for the control of the M. & C. Rd. The L. & N. will not compete for the control of the B'ham, Sheffield & Tenn. River Rd., provided you will acquire it, should it become necessary to do so to prevent its extension into Birmingham, or will not permit it to get into a position where it may become a disturber. The L. & N. Rd. will not compete for the control of the Mobile & Birmingham with the expectation that you will acquire it. It is not clear what disposition ought to be made of the Georgia & Alabama Railroad. It would seem to belong to the Central and I would be glad to see it so disposed of, could I be assured that the Mobile & Ohio would not construct a line from Columbus, Miss., to Montgomery, Ala., which will only be done in the interest of the Plant system. In that case I am not sure that it may not be for your interest and ours that we acquire the G. & A. as the Central with its interests and connections at Atlanta and Birmingham could not be relied upon to freely interchange traffic with us at Montgomery, which is the point of interchange for the southeast, which will best promote our interests.

However, unless there is a very material change in the situation we will refuse to negotiate or consider the matter in any way. The B'ham & Atlantic, East & West, Chatt. Southern and Chatt., Rome & Columbus to be permitted to continue to "stew in their own fat." I think I have some reason to believe that the present owners of the K. C. M. & B. would sell if they could find a purchaser. Do you want it? I have been trying, through Col. J. C. Clark, president, and Capt. J. G. Mann, G. M to induce the Mobile & Ohio R. R. to purchase it and abandon the building of a line from Columbus, via Tuscaloosa, to Montgomery, with a branch into Birmingham. This, of course, will not suit Mr. Plant, who I suspect to be quite influential in Mobile & Ohio affairs, although he strenuously denies it. I have had some talk and correspondence with you in regard to some corporations in Kentucky. See my letter to you of November 18, 1895, relating to the Cumberland & Ohio R. R., northern division. Since that letter was written the property has been placed in the hands of a receiver, and I think you or some of your people have been approached on the subject of operating it, and possibly of acquiring it. We shall be very glad to be relieved of it and very glad to have you take it, provided we are assured that it may not in the near future be extended southwardly across our Springfield, Ky., branch to Lebanon, Ky. If left to itself, it must be abandoned, which would be, under the circumstances, a very proper and desirable disposition. Also see letter to you of Nov. 18, 1895, relating to the Richmond, Nicholasville, Irvine and Beattiville Rd. running through Versailles, where it crosses the Cincinnati Southern, through Nicholasville and Richmond, Ky., at which latter point it crosses the L. & N. Rd., to Irvine, Ky.; also to letter of November 19, 1895, relating to the Kentucky Midland, a road that extends from Frankfort, Ky., a point on the L. & N., crossing the Cincinnati Southern at Georgetown, to point of connection with the L. & N. Rd. at Paris, Ky., a distance of 40 miles. You replied to the letter relating to the C. & O., northern division, stating if the parties approached you you would make no arrangement without full consultation and agreement with me. You do not seem to have replied to my letters regarding the R. N. I. & B. or Ky. Mid. Neither of these properties are of any value as a business. The R. N. I. & B. touches two rather important points on your lines and may be used to injure your traffic. It is used to our disadvantage at Richmond, which is perhaps in part offset by traffic interchanged. The Ky. Midland is a constant source of irritation at two points on our lines.

I suggest that the L. & N. R. R. Co. do not purchase the R. N. I. & B. property, leaving you to do as you please, and that you decline to purchase or to permit anyone to purchase in your interest the Kentucky Midland property, leaving us to do as we please.

Our understanding regarding the line between Knoxville and Nashville seems to be about as follows: That neither of us will promote or aid in the construction of any part of this line, and that neither will purchase either the Crawford or the Tennessee Central roads without the concurrence of the other.

As stated to you at interview this morning, the situation regarding the Tennessee Central has radically changed, and there is now a certainty that it will be constructed. I told you of my chance interview with Mr. C. O. Godfre, who is at present actively promoting the enterprise, who proved to be a man with whom I had a business acquaintance nearly 25 years ago. The construction of the Crawford road and the reasons for the parties who are now acquiring and propose to construct the Tennessee Central are striking illustrations of the danger of allowing properties which have cost a large sum of money to lie about loose. Some successful people seem to be so constituted that they can not charge to profit and loss a bad investment—will expend large sums in an endeavor to recoup. Others are so constituted that when given a piece of property that has cost a large sum of money, for a nominal consideration or for a small part of its original cost, are tempted to invest or can induce other people to invest large sums with the hope of making a lost investment profitable. Mr. Huntington seems to be a type of the latter class.

The original promoter of the Crawford road, who lived at Newcastle, Pa., had acquired considerable of a fortune in mining, manufacturing, and railroad building. He loaned about $100,000 and took as security some Tennessee mountain lands, and in that way acquired ownership. Believing the lands to contain coal, he invested something over $2,000,000 in building a railroad to develop it. He apparently exhausted his resources before he reached the coal lands, and died some five or six years ago. His sons have since carried the property and show a determination to hold until they can dispose of it without much, if any, loss. As a business piece of property, it is practically worthless, as in its present condition it can earn little, if any, more than enough to pay maintenance and transportation expenses. I had learned incidentally that Mr. Godfre in some way represented the Niedringhaus people of St. Louis, and I was, of course, curious to know why they had undertaken the construction of the road in the Mountains. He quite frankly told me that when Mr. C. Niedringhaus was in Congress he was induced by Messrs. Joe Blackburn and Benton McMillin to invest something like $84,000 in mountain lands. Curiously, it turns out that the principal behind Blackburn and McMillin was Dr. W. L. Breyfogle, and that the agents did not get their commission. The Niedringhauses added largely to their land holdings. I think Godfre told me they owned something like 160,000 acres; that in addition to constructing the road they are promoting immigration, advertising extensively in the German papers and offering inducements to desirable but impecunious immigrants in the way of land and sufficient animals, implements, etc., to give them a start. Their scheme is an ambitious one, although they have only entered upon the construction of that part of the line between Monterey (point of connection with the Crawford road) and Kingston, Tenn. Godfre says that they have been unable to reach an agreement with the Crawfords, and that if they fail to do so they will extend their line westwardly to Lebanon and, if necessary, to Nashville; prefer to purchase the line between Lebanon and Nashville from the N. C. & St. L. Ry. He says that had the L. & N. Rd. not bought the Tennessee Midland and P. T. & A. roads they contemplated taking them into the scheme and extending the Tennessee Midland to Nashville. I advised Godfre not to build east of Harriman, and suggested that if he was unable to agree with the Crawfords upon terms for the purchase of their road he first try working under an equitable traffic agreement, forming a line between Knoxville and Nashville. He did not, however, commit himself to this. You are advised that we have been negotiating with the Crawfords for the last seven or eight years, or perhaps from the time they commenced the construction of their road, although none have been had since some time in 1893. I suggest that this matter be disposed of something as follows: That the L. & N. or the N. C. & St. L. endeavor to acquire the line between Harriman and Lebanon when it can be done upon satisfactory terms, agreeing to prevent the construction of a road into Knoxville, but forming with the Southern Railway a through line between Nashville and Knoxville.

I was greatly disappointed to learn from Mr. Godfre that the T. C. & I. R. R. Co., and especially Mr. Ned Baxter, jr., who had indorsed for Mr. Jere Baxter to the amount of $75,000, would under the arrangement be paid in full. As you know, I was very desirous that these parties should lose their investment. The relations of Mr. Nat Baxter, jr., as president of the Tenn. C. I. & R. R. Co. to the Southern, N. C. & St. L., and L. & N. Rds. are such as to justify retaliation for actively aiding in the construction of a line intended to inflict serious injury upon the important interests that have done and are doing so much to promote the interests of the T. C. I. & R. R. Co.

Referring to your remark of the inducements that have been offered you by the Nashville people to acquire the Tennessee Central and construct a line into Nashville * * *. As bearing on this subject, I inclose copy of correspondence between Mr. ——— and Mr. Stuyvesant Fish, president Illinois Central Railroad. I have advised Mr. Belmont of our agreement that neither party will acquire the property of the Marietta & North Georgia Railroad Co. without the consent of the other. You may, therefore, freely communicate with him upon the subject, and I assume he will do likewise.

Yours, truly,

——— ———, *President.*

Letter from Samuel Spencer, president of the Southern Railway, to M. H. Smith, president of the Louisville & Nashville Railroad Co.:

NEW YORK, *February 29, 1896.*

Mr. M. H. SMITH,
President L. & N. R. R., Louisville, Ky.

DEAR SIR: Your letter of the 22d instant.

Pizarro: Since our last conversation, the division of the New World between us has made some progress.

Cortez: Yes; you seem to have acquired Patagonia, and I have secured a considerable part of North America which touched my former territory, but it seems to me you have acquired a considerable neck of the Isthmus which is the connecting link between us. Was it understood that connecting links which touched both of us should be a matter of consultation before acting or not?

Pizarro: * * * I agreed that it is desirable to renew the subject and, if practicable, to make our understanding more specific. The principles on which I think this understanding should be based are:

(1) That neither the L. & N. nor the Southern shall acquire lines in the territory of the other, and that lines connecting with or touching one and not the other shall be regarded as in the territory of the one which they connect or touch.

(2) That neither will acquire lines allied by former ownership, lease, or otherwise, to the other, and which at the moment are not controlled by reason of pending reorganizations or other cause.

(3) That neither will acquire lines which connect with or touch both, either directly or through subordinate or controlled lines, without previous consultation and, if possible, agreement.

(4) That neither will foster the construction of new lines or the completion of unfinished ones into the territory of the other, but when questions with

reference to such lines arise, we shall proceed by agreement with each other, if possible.

Will you please consider this and say if such a declaration of principles is satisfactory?

Taking up specific lines and recalling our conversation of the 22d instant, I am unable to say anything additional as yet regarding the Knoxville, Cumberland Gap & Louisville, as I have been away from the office and much pressed by important current matters since that date. I note you make no reference to it in your letter. Are you willing to consider the suggestion which I made, that we should take the property off of Mr. Belmont's hands on joint account and operate it either as purely a local line, avoiding as far as practicable additional expenditure on it, or, if practicable, arrange to abandon it, and divide the loss, you getting the protection of your tunnel at the north end and the entire benefit of such local development at that end as the future may bring, we getting similar benefit at the south end and agreeing to continue to let you into Knoxville over our line, as heretofore, or upon same basis which is mutually satisfactory if your present entrance is not so? As regards the Macon & B'ham, what I intended to say to you was not that our intention was to allow it to be abandoned, but that I hoped we could arrange this result with the recent purchasers, with whom I am now in communication. I note that the L. & N. will not compete for the Memphis & Charleston, and also that it will not compete for the Birmingham, Sheffield & Tennessee River, provided the Southern will acquire it if necessary to prevent its extension into Birmingham. I confirm and accept that understanding. I note that the L. & N. will not compete for the control of the Mobile & Birmingham. I may say that we have no intention at present of acquiring this line, and see no prospect of doing so. As it goes into your territory at one end and ours at the other, I am willing to agree that we will not acquire it without consultation with you; and if it should develop to be to your interest to do so, whenever negotiations arise we will not be opposed to your acquiring it, provided you make agreement to let us into Mobile and New Orleans on a basis similar in principle to that on which we would agree to let into Knoxville, as above, and to Savannah and other central railway territory.

As regards the Georgia & Alabama, I suppose the question is not ripe for action by either party at this time. I think the new owners, under the guidance of their young president, feel very sure of improved results on their investment—in fact, I am not sure that they are not looking forward to 10 per cent dividends on the common stock. An agreement has recently been made between that company and the Central of Georgia by which they secure trackage into Savannah and the use of terminals, and if you will agree to use Central Railway lines from Montgomery and from Atlanta I think it can be arranged that they shall be open to you on terms as favorable as you can get from the Georgia & Alabama. You already have another line from Montgomery to Savannah by way of the Plant system.

I note, however, that unless there is a material change in the situation you will refuse to negotiate or to consider the matter in any way, and I am willing to leave it in this shape, with similar agreement on our part, subject to future consultation between us.

I agree in your view and accept it that the B'ham & Atlantic, East & West, Chatt,, Southern, and Chatt., Rome & Columbus be permitted to continue to "stew in their own fat," if any fat can be found in them, neither of us to do anything with regard to either property without consultation wih each other.

As regards the K. C. M. & B., I do not think we want it, and I am willing to agree that neither of us shall buy it without consultation with the other. It will be acceptable to us to have the Mobile & Ohio acquire it, instead of building a line from Columbus to Montgomery and Birmingham. I may have been derelict with regard to your letter of November 18 (2907) concerning the Richmond, Nicholasville, Irvine & Beattyville Rd. and your letter of the 18th relating to the Kentucky Midland. I never found the time at all to look into these properties, but I thought that our interview prior to the writing of your letters resulted substantially in an understanding that we would do nothing about them without consultation, as they affected your lines more than ours. I am willing to adopt your suggestion that we shall not purchase or permit anyone to purchase in our interest the Kentucky Midland, leaving you the field with regard to it. I also accept the suggestion that you shall not purchase the R. N. I. & B. Rd. leaving the field to us, although I have not sufficient knowledge now to say that we would want it under any circumstances. I note what you say with regard to the projected line between Nashville and Knoxville and am obliged to you for putting your information on the subject in record for me.

You are quite mistaken as to the party or parties who have approached us from Nashville on this subject. They are much more substantial than the party you name, and there has been more than one. As I have stated to you, I have given the idea no encouragement whatever.

Confirming our verbal understanding of the 22d instant, I beg to say that we will give no encouragement to the construction of such a line without previous consultation and understanding with you, but if the present projectors, or others, develop sufficient strength to carry the enterprise through from Nashville to Harriman we will cooperate with you on a fair basis as to the handling of any business in connection with it which is competitive with you. I note your advices to Mr. Belmont concerning our agreement that neither party will acquire the property of the Marietta & North Georgia without the consent of the other, and I confirm that agreement.

Yours, very truly,

S. SPENCER, *President.*

Mr. JOUETT. It is understood that we object to all of these letters going in, and the objection has been overruled.

Mr. FOLK. Letter from Milton H. Smith, president of the Louisville & Nashville Railroad, to Samuel Spencer, president of the Southern Railway, 80 Broadway, New York City, dated March 6, 1896. [Reading:]

DEAR SIR: Circumstances have prevented me giving consideration to your personal and confidential favor of the 29th ultimo until now. As to the declaration of principles submitted:

1. That neither the L. & N. nor the Southern shall acquire line in the territory of the other and that lines connecting with or touching one and not the other shall be regarded as in the territory of the one touched or with which they connect.

2. Applying the foregoing to existing conditions, it would, so far as I can recall, be applicable only to the Nashville and Knoxville so-called Crawford road. I think all the other lines may be considered as connecting with or touching lines of both companies at some point.

3. That neither will acquire lines allied by former ownership lease or otherwise to the other and which at the moment are not controlled by reason of pending reorganization or other cause.

This would apply for us to the northern division of the C. & O., extending from Shelbyville, Ky., to Bloomfield, Ky. On the other hand, it would apply to the Memphis & Charleston, Mobile & B'ham, Chattanooga, Rome & Columbus and possibly the Macon & Northern.

3. That neither will acquire lines which connect with or touch both, either directly or through subordinate or controlled lines, without previous consultation, and, if possible, agreement.

It seems to me that the foregoing would apply to the Tenn. Midland, Nor. Div. of the C. & O., R. N. I. & B., M. & C., M. & B., C. R. & C., East & West, Chattanooga Southern, B. & A., G. & A., and perhaps others.

4. That neither will foster construction of new lines, or the completion of unfinished lines into the territory of the other, but when questions with reference to such lines arise we shall proceed by agreement with each other, if possible.

This, so far as I recall, would now be applicable to the Tennessee Central only. I will say that the declaration of principles is satisfactory. However, it seems to me that the specific applications you make are inconsistent with the foregoing declaration of principles.

As to the K. C. G. & L. road, I do not recall that you made the suggestion you described. You had asked if the rumors of the K. C. G. & L. being purchased by the L. & N. were true, and I have replied that while the L. & N. R. R. had not purchased the property, I wanted to confer with you regarding the matter, and at the conference at your house I admitted that the information that Messrs. August Belmont & Co. had purchased the property to be correct but stated that it had not been taken over by the L. & N. Rd. Co.; that the board of directors had not taken any action, but it was expected that the company would acquire the property but that it was in a condition that it could be disposed of in any way deemed best. We then went rather carefully over that portion of the typewritten report of our interview at Kennesaw, Ga., on October 28, 1894, relating to the K. C. G. & L. Rd., and I stated after careful consideration of what was said at that interview the conclusion had been reached that you were unwilling to commit yourself relative to that property, and that of course if you were not committed we were not. I think I also called your attention to my attempt to discuss the matter with you at the Hotel Waldorf in June last, and what I considered a rebuff, which confirmed the conclusion I had reached that you did not wish to commit yourself regarding the property. I think you admitted that you did not consider the interview as binding either party but claimed that you had been acting under the impression that we had a general understanding that neither of us would do anything with any of the loose properties connecting or competing with either without the knowledge if not the assent of the other. I stated I thought we were justified in the conclusion we had reached regarding K. C. G. & L. Rd., but that if we were wrong perhaps the matter could be adjusted, and asked what you would like to do, if you would like to acquire the property. You replied that you might, at a price, or something to that effect. Then I replied that the property had cost, I thought, about $1,000,000, and that should we dispose of it we would want some arrangement regarding the tunnel. I understood you to say you would give the matter consideration and write me, but I do not recall your having made the proposition described in your letter of the 29th ultimo. However, considering that proposition, I will say that I do not think we would care to become joint owners of the property with you, but would prefer to transfer to you, with some arrangement relative to the rental of the tunnel and for its reconstruction. We would be interested to the extent of the industries which are trying to get under way, at least the furnaces and steel plants, at Middlesborough, are dependent upon this line for raw material. It might be feasible to abandon it, although it would probably result in some complications in connection with the tunnel end, as I suppose, we could not do so without forfeiting the charter. However, this is a matter that I imagine you, as well as I, will want to carefully consider before reaching a conclusion.

With reference to the disposition of the Memphis & Charleston and Birmingham, Sheffield & Tenn. River Rds., while not consistent with the declaration of principles, is satisfactory. Your suggestion with reference to the Mobile & B'ham is satisfactory. As to the Georgia & Alabama, I imagine that has been in a way already disposed of, as I understand the Central Railroad has leased, or proposes to lease the Lyons Branch to it, in addition to giving trackage rights into and use of terminals at Savannah. At any rate we are agreed as to the matter. We also seem to be agreed relative to the B'ham & Atlantic, East & West Chatt. Southern, and Chatt., Rome & Columbus. We are also agreed as to the Richmond, Nicholasville, Irvine & Beatyville; also relative to the Ky. Midland Railroad.

I note you do not agree to my suggestion "That the L. & N. or N. C. & St. L. endeavor to acquire the line between Harriman and Lebanon when it can be done upon satisfactory terms, agreeing to prevent the construction of a road into Knoxville, but forming with the Southern Ry. a through line between Nashville and Knoxville," but in effect propose that we will give no encouragement to the construction of such a line without previous consultation and understanding with you, but if the present projectors or others develop sufficient strength to carry the enterprise through from Nashville to Harriman, we will cooperate with you upon a fair basis as to the handling of any business in connection with it, which is competitive with you. The meaning of the foregoing extract is not clear to me. My suggestion was that the L. & N. or N. C. & St. L. acquire the road to Harriman, and there form with your line a through line between Nashville and Knoxville, while you propose to not give any encouragement to the construction of such a line without previous consultation and understanding with us, but if the present projectors or others build or acquire an independent line (i. e., independent of the N. C. & St. L. between Nashville and Lebanon) between Nashville and Harriman you will cooperate upon a fair basis as to the handling of any business in connection with it which is competitive with us. I hardly know what the foregoing means. The only construction it would seem susceptible of is that should an independent line be constructed from Nashville to Harriman, in arranging to interchange traffic with them, will cooperate with us as to the basis upon which you will interchange traffic which is competitive, which I suppose would mean business passing between Nashville and Knoxville by way of Chattanooga. It seems to me that it would be better for all concerned for you to agree to have nothing to do with the lines west of Harriman, leaving us free to acquire them if we can do so on satisfactory terms to us. I suggest that reconsider this question and let me hear from you again.

Yours, truly,

——— ———,
President.

Letter from M. H. Smith, president of the Louisville & Nashville Railroad, to Samuel Spencer, president of the Southern Railway, dated Nashville, Tenn., March 30, 1896. [Reading:]

SAMUEL SPENCER, Esq.,
President Southern Ry.,
℅ Roscwell Miller, Prest. C. M. & St. P. Ry., Chicago, Ill.

DEAR SIR: Please recall our recent correspondence relative to probable disposition of certain railroad properties.

In that correspondence I think I failed to mention the Decatur, Chesapeake & New Orleans R. R., which is a road partially constructed, and on which, I think, some track has been laid, but which has never been operated, extending from Shelbyville Tenn., a point on the N. C. & St. L. Ry., through Fayetteville, another point on the N. C. & St. L. Ry. to Decatur Jct., Ala., point of intersection with M. & C. and L. & N. Rds.

My failure to refer to this property in our past correspondence was due to the fact that I considered it a dead property. I am, however, now advised that contractors have undertaken to complete the road from Decatur Junction to Fayetteville, Tenn., during the current calendar year and accept pay in first-mortgage bonds on a basis of about $4,000 per mile. I believe the work to be done is light, and rails have already been delivered on some part of the line, some of which are in the track. The liens upon the property are quite large. It is proposed that the lienors shall receive second-mortgage bonds at the rate of $12,000 per mile. The Fourth National Bank of New York (Mr. Simmonds, president) represents about two-thirds of the debt, and under the arrangement would be entitled to about $400,000 of the second-mortgage bonds. It is understood that they have given the contractors an option on same until December 31 next at 15 cents. One of the contractors was in Huntsville last week proposing to build a branch into that town, provided sufficient inducements were offered. It is also stated that they expect to sell the property to the purchasers of the Memphis & Charleston Railroad. This is another illustration of the danger of permitting worthless properties in which capital has been invested and lost to lie about loose. It has been my desire to buy this property and take up the rails, but I have failed to give the matter my personal attention, as it has been in Mr. Thomas's territory and he has been looking after it, but for some reason has failed to come to terms with the owners or creditors.

Yours, truly,

——— ———,
President.

Letter from Samuel Spencer, president of the Southern Railway, to M. H. Smith, president of the Louisville & Nashville Railroad, April 4, 1896. [Reading:]

DEAR SIR: Yours of March 6. In my letter of February 29 I included the declaration of principles as stated therein, and as quoted by you in yours of the 6th, to be general in their application and to form the basis on which we should deal with each other, not only now but in future. They were not intended to take precedence over specific cases which had already arisen and were under discussion between us on possibly different bases. It is true, as you state, that some of these specific cases which have already arisen might conflict or come within the terms of two or more of the statements of principles as outlined.

Probably a broader and sufficient declaration of principles would be that neither of us would buy or promote lines which directly affect the interest or the territory of the other without consultation. This would bring up each specific case as it arose for consultation and possible agreement. The only portion of your letter now apparently requiring response is that with reference to the line between Harriman and Lebanon. In view of what has since transpired with regard to the K. C. G. & L., I now agree that we will not acquire any portion of the line between Harriman Junction and Nashville, leaving you free to purchase whenever you can, with the understanding that if you should so purchase we will join you in forming a branch line between Nashville and Knoxville, using our present line from Knoxville to Harriman for this purpose, provided that, in so far as may lie in your power, you will discourage the construction of the proposed additional line from Harriman to Knoxville via Kingston.

I think, however, we must still in some form provide for the case that the present projector or others may develop sufficient strength to carry the enterprise through from Nashville to Harriman. If this should be done and you should be unable to acquire the line on satisfactory terms, it might be necessary from our standpoint to agree to some sort of connection and interchange of business at Harriman, as a means of possibly preventing the construction from Harriman to Knoxville, and it was this contingency that I intended to cover in the paragraph which you quote the meaning of, which you say is not clear to you. I have met your suggestion that we have nothing to do with lines west of Harriman, and I now ask you to adopt a similar course as to the lines east of Harriman. I suppose the danger of completing construction of the Tennessee Central in independent hands from Harriman to Nashville is rather remote, and we can treat the matter with our interchanging business with such a line when it arises. Responding to yours of the 30th untimo, from Nashville, with reference to the Decatur, Chesapeake & New Orleans R. R., it will be satisfactory to us for you to acquire this line should the opportunity occur. We will agree to have nothing to do with it, either as purchasers of the Memphis & Charleston Rd., or otherwise.

Yours, very truly,

——— ———,

President.

Letter from Milton H. Smith, president of the Louisville & Nashville Railroad, to Samuel Spencer, president of the Southern Railway, dated November 18, 1896. [Reading:]

ON N. O. & M. SPECIAL,
November 18, 1896.

MR. S. SPENCER,
Prest. Southern Ry.,
#80 Broadway, New York, N. Y.

DEAR SIR: I make following extracts from a confidential communication dated 17th inst., which I have just received: "Mr. ———, whom I saw Sunday, has just returned from New York and states as a great 'state secret' to me that the Tennessee Coal, Iron & R. R. Co., in connection with Col. Bush, is actively figuring on and considering the construction of Bush's road to a connection with Pratt mines and the Tenn. C. & Y. Co.'s Pratt mines road. The plan, as stated to me, is that Bush is to build to Blockton from Marion Jct. and the Tenn. C. & I. Co. to build to Blockton from a point near their No. 5 coal mine, which is close to Woodward, and then by some arrangement, the particulars of which are not stated, the link between No. 5 and the Sheffield road at Parrish is to be built. As this rumor comes to me, Mr. Baxter is in New York, where this matter is being considered now and has been for some time, and Mr. Bowron has been ordered there on the same subject, leaving here last Sunday night with certain data that was required."

You will recall that when our friends of the Ill. Cent. were negotiating for the control of the Cairo Short Line, which they afterwards secured, the P. T. & A. and Tenn. Mid., which the L. & N. Rd. purchased, and the old B'ham, Sheffield & Tenn. River, now the Northern Alabama Ry., that certain parties in the interest of the last-named company had acquired an option on roads of the Tenn. C. I. & R. R. Co., which option was recorded and a copy of which I think I sent you. We may be assured that the T. C. I. and R. R. Co., under its present management, will scheme, cooperate, and aid in every way in its power to secure the building of competing lines and the utilization of its various local roads, including track into Birmingham connecting with our Union Station tracks to that end. They will probably try "Carnegie" line, to add to the inducements by contracting to give the new road the handling of a large amount of traffic at rates that will be much lower than the current rates, or lower than the business justifies.

My understanding with you is that you are to look after the Northern Alabama Ry. and the Mobile & Birmingham. I am, therefore, relying upon you to see that the scheme described herein, or any like it, does not become effective.

Yours, truly,

——— ———,

President.

Mr. **Folk.** Now, Mr. Smith, this conference between you and Mr. Spencer, at Kenesaw, Ga., October 28, 1894, was held where—at a hotel?

Mr. **Smith.** No; in a car.

Mr. **Folk.** In a car?

Mr. **Smith.** Yes.

Mr. **Folk.** Was there a stenographer present?

Mr. **Smith.** Certainly; two of them.

Mr. **Folk.** And a record was made of what you said and what Mr. Spencer said, was there not?

Mr. **Smith.** I am not sure about that. It has been a long time ago, and the developments afterwards were entirely different than were contemplated at that time.

Mr. **Folk.** But you are quite sure the stenographers took down——

Mr. **Smith** (interposing). No; I am not sure, but I presume so—that is, you have it there, I expect.

Mr. **Folk.** I will ask you to examine this memorandum, purporting to be a report of a conference between Mr. Samuel Spencer, president of the Southern Railway Co., and Mr. M. H. Smith, president of the Louisville & Nashville Railroad, at Kenesaw, Ga., Sunday, October 28, 1894, and state whether or not this stenographic report is correct, according to your recollection of that conference.

Mr. **Jouett.** We will look at it after you are through, Mr. Smith.

(The copy of the stenographic report referred to was thereupon handed to Mr. Smith, and was examined by him.)

Mr. **Folk.** What was your answer to the question?

Mr. **Stone.** Wait a minute, Governor.

Mr. **Jouett.** Wait just a minute, Governor.

Mr. **Stone.** We do not want to delay the investigation; but we think it is incompetent, and we object to it, of course. We have never had a chance to look at it. We have never seen it, or heard of it before.

Mr. **Jouett.** If you will just ask him whatever question you want to ask——

Mr. **Stone** (interposing). And offer it later.

Mr. **Jouett.** And then offer it to be read as evidence, we will then have an opportunity to look it over without delaying the hearing.

Mr. **Folk.** Will you read the last question I asked Mr. Smith in reference to this conference?

The **Reporter** (reading):

> I will ask you to examine this memorandum purporting to be a report of a conference between Mr. Samuel Spencer, president of the Southern Railway Co., and Mr. M. H. Smith, president of the Louisville & Nashville Railroad, at Kenesaw, Ga., Sunday, October 28, 1894, and state whether or not this stenographic report is correct, according to your recollection of that conference?

Mr. **Smith.** It is a matter that occurred 23 years ago, and I have very little recollection of it. It is practically obsolete, and for the last 14 years, when there was a falling out between the two parties, it has been absolutely ignored.

> The best-laid plans o' mice and men
> Gang aft a-gley.

However, as far as I can recall, that is a correct copy of the memorandum that was made of that interview.

Mr. **Folk**. According to your best recollection, then, this memorandum is a correct memorandum of the conference between you and Mr. Spencer on October 28, 1894?

Mr. **Smith**. Of the date I am not sure, but I think that is correct.

Mr. **Folk**. I offer the memorandum of this conference in evidence.

Mr. **Stone**. We object to it.

Mr. **Jouett**. We object to the memorandum being read in evidence. I will say, however, if you will let us look over it——

Mr. **Folk**. It may be considered as read, subject to your objection, and copied into the record as if read.

Mr. **Jouett**. I say this, before it is offered formally, that we desire to read the memorandum to see if there is anything of a personal nature in it that is purely incompetent, so that we may discuss that with you, that that reservation may be now made, in order to save the time of our reading it while the case is progressing, and we can pass on, and as soon as we have had an opportunity to read it we will return it to you.

Mr. **Folk**. In order that the record may be straight, let us consider that as read into the record at this point.

Mr. **Stone**. We do not want to agree to that.

Mr. **Folk**. You gentlemen can examine it, and if there are any statements in it that you desire to make a special objection to we can then dispose of those objections at the time you call attention to the statements.

Mr. **Jouett**. Before the paper itself becomes public?

Mr. **Folk**. Yes, sir.

Mr. **Jouett**. That will be all right.

Mr. **Folk**. Well, can't you examine it now?

Mr. **Stone**. It will just take that much time to read it right here. We will be glad to do it, if you are willing.

Mr. **Jouett**. We can return it in the morning and let you know whether we object to it.

Chairman **Meyer**. The witness has identified the paper as substantially correct, according to his best recollection. The objections made may stand of record, but it seems to me the paper should be admitted.

Mr. **Jouett**. With this exception only, Mr. Chairman: It is barely possible that there is something in that paper that would be entirely irrelevant and immaterial, and which the commission would readily decide to be irrelevant and immaterial. In that event it would not be proper for it to go into this public record. We have not read it, and have no idea of what it contains, but what we wish is the right to examine this paper before it is made a part of the record and made public, so that we can then make objections to you as to any part of it as is of a private or confidential nature and is not at all relevant here. It is a private conference between the two gentlemen, and it occurred 23 years ago. It may be that it is all relevant upon your honor's theory of the case, but it is also quite possible that there may be a number of private matters which your honor may readily conclude are not proper here and should be excluded.

All we desire is the right to call your attention to any such matters, if any there be, before this matter becomes public.

Mr. **Stone**. After we have read it.

Mr. **Jouett**. After we have read it, and if that can not be done, then we certainly ought to have the right to read it right now.

Mr. **Folk**. Suppose we read it right now, and we will not read any statement in of a personal nature, without consulting you gentlemen.

Mr. **Stone**. We object to that, unless we know what is in it.

Mr. **Jouett**. There is no use making it public.

Mr. **Folk**. I suppose it will save time to let these gentlemen read it now.

Chairman **Meyer**. We will take a recess five minutes, while that is being read.

(A recess was taken of five minutes, during which time Mr. Stone and Mr. Jouett read the copy of the report referred to, and afterwards the hearing proceeded.)

Mr. **Jouett**. I make the regular objection, your honor, as being incompetent and as bearing upon a matter not within the jurisdiction of this commission.

Chairman **Meyer**. Your objection is noted on the record, and the paper may be admitted in evidence.

Memorandum of conference between Mr. Samuel Spencer, president Southern Ry. Co., and Mr. M. H. Smith, president Louisville & Nashville R. R. Co., at Kenesaw, Ga., Sunday, October 28, 1894.

Subject of conference: Probable or possible disposition of various railroads belonging to corporations other than the Southern Ry. and the Louisville & Nashville R. R. in the territory south of the Ohio River.

Mr. **Smith**. The Southern Ry. has already acquired what is known as the Louisville Southern, and it may be assumed that it would like to acquire, or will acquire what is known as the Cincinnati Southern or Erlanger system, if it can be done upon satisfactory terms. In this conference you will not be expected to commit yourself to anything that is not prudent or proper for you to do. I am willing to say, so far as I am concerned, that whatever passes between us shall be considered confidential, at least to the extent of not being disclosed to the injury of either party. The information I may get will probably be used, at least in a general way, with some of our directors, as should the matter come up for discussion, I would naturally use the information.

Mr. **Spencer**. That is entirely agreeable.

Mr. **Smith**. From present indications, I assume you would like to acquire those properties (C. S., A. G. S., etc.)?

Mr. **Spencer**. The situation is this: We have already acquired nearly one-half of the East Tennessee extension bonds, the total issue of which covers directly or indirectly a majority of the stock of the A. G. S. and of the C. N. O. & T. P. Co.

Mr. **Smith**. That is as I understand it.

Mr. **Spencer**. If that collateral is sold under foreclosure, we would naturally be a bidder for it, and the result as to the control will depend upon what sale, unless negotiations in the meantime should otherwise determine the matter. We bought the bonds owned, of course, with the expectation that it might lead to the control of those properties and with that view.

Mr. **Smith**. I have reached the conclusion that what I at one time suggested to you, namely, that the Southern Ry. Co. should not acquire property north of the Jellico-Harriman Jct.-Chattanooga line, and should therefore be in a position to interchange traffic with all connections north of that line on equal terms, will not or can not be adopted; that, therefore, we must proceed upon the supposition at least that the Southern Ry. will be a direct competitor with the L. & N. R. R. to and from various points on the Ohio and Mississippi

Rivers. I assume that the Memphis & Charleston road will have to be sold and that your company will be the only customer at the sale; and I also assume that the Mobile & Birmingham road will sooner or later be disposed of in the same way, thus giving you control of lines touching the Ohio and Mississippi Rivers at Cincinnati, Louisville, Memphis, Greenville, Vicksburg, New Orleans, and the Gulf at Mobile. Now, outside of those roads there are a number of lines only partially constructed and equipped that, if not acquired by one system or the other, may in time give one or both of us a great deal of anxiety. I have further assumed that you would acquire the Knoxville, Cumberland Gap & Louisville Rd. I was talking to you about this some time ago, and at a time when Gen. Thomas had contracted to take, I think, a majority of the securities or controlling interest in them. I think you then told me that while Gen. Thomas had bought these securities it was with the understanding that possibly at some time in the future, when you got reorganized, you might take them off his hands at cost; in other words, that he was at the time buying in your interest. If I am correctly advised, that contract was not complied with.

Mr. SPENCER. It was not.

Mr. SMITH. And I have learned incidentally that the first-mortgage bonds—and I suppose the second mortgage and stock—belonging to the American Assn., Ltd., amounting, I think, to $600,000 first mortgage, out of a total of $1,500,000, has been sold to somebody for a very small consideration; that is, that they have been pledged as collateral security for the loan of $150,000, and that they had been sold out.

Mr. SPENCER. That is my understanding.

Mr. SMITH. I do not know whether your friend, Gen. Thomas, was the purchaser or not.

Mr. SPENCER. I do not think he had anything to do with it at all.

Mr. SMITH. I assume that this line will go to you, to which we would not object if you would stay on the other side of the line. We are interested in the use of the tunnel at Cumberland Gap, and I assume if you were on the other side of that line and had all of the roads to Knoxville we would get all reasonable facilities for business to Knoxville; but if you had your own line to Louisville and Cincinnati it would not be to your interest to give us the business at Jellico or Cumberland Gap, and your control of all lines at Knoxville places us at a disadvantage. There remains in the territory north of south boundary Tennessee line the P., T. & A., the Tenn. Midland, Decatur Chesapeake & New Orleans, the Chesapeake & Nashville, and the Nashville & Knoxville roads, with what little work has been done on the Tennessee Central R. R., which, if constructed, would be an extension of the Nashville & Knoxville Ry. to point of connection at least with your line at Harriman Jct. or Oakdale. Perhaps we may as well consider the Birmingham, Sheffield & Tenn. River Rd. at same time. What do you think ought to be done with the properties enumerated by one or both corporations. If they are are to be allowed to fall where they belong, where should they go and in whose interests should they be controlled?

Mr. SPENCER. You are talking about railroads now that I know very little about; but to go back for a moment. We will assume for the purpose of this conversation that the Erlanger system—so-called—may get into our hands. If not, I assume it will go into the hands of the C. H. & D. Ry., and I assume that the L. & N. would as soon see it go into our hands as into the hands of that company. As regards the Memphis & Charleston—for the purposes of this conversation, I am willing to assume that it may go into our system. We have offered the bondholders certain terms, which they did not accept and that nonacceptance was probably due as much as anything else to the fact that the owners have never realized the real condition and value of the M. & C. Rd., having in their minds a greater value of the property as indicated by its earnings of years ago. Competition has grown to an extent which in all probability will prevent such results ever being attained again. The bondholders may in time accept such terms upon which we can afford to take the property into the Southern system.

As to the Mobile & Birmingham Rd., so far as I can see, there is no possibility of its going into our system. The bonds are largely held abroad and the holders still have an idea that the property is of some value. Certainly, the operations under the E. T. V. & G. did not indicate that it had, and I do not think from a recent review of the receiver's operations to June 30 last, that the situation is much changed.

Mr. SMITH. Well, one word as to what you said to the effect that you would assume that we would so soon you have the Erlanger system as the C. H. & D.

In that I think you are mistaken. I think we would prefer to have the C. H. & D. or any other independent company control those roads for the reason that you, controlling, as I understand you will, a large system of roads south of the Chattanooga line, would, if you had no direct connection north or west of that point, naturally occupy a neutral position; that is, it would not be for your interest to exclude us from competing for traffic in the southeastern territory over lines controlled by you, or it would not be for your interest to decline to interchange traffic with us, while, if your own lines extending directly to the Ohio and Mississippi Rivers your interests will appear to be at least promoted by controlling the traffic to the end of your lines and from the end of your lines, while if the Erlanger system is controlled by an independent corporation, we would still be in a position to compete for traffic going to and from Chattanooga, south and southeast of Chattanooga, upon equal terms; nevertheless, I say I have assumed that you would probably control those properties and that you will control the roads now controlled and owned by the Central Railroad of Georgia.

As to the Mobile & Birmingham, I recognize that you may not agree with the present owners as to the value of that property and may not immediately acquire it, nevertheless it is of no use to anyone else, and so long as it is theirs, I assume you can use it. I can not see, however, if you acquire the other roads of the Erlanger system that it would be to your interest to use it to any extent except upon traffic to and from Mobile. Your New Orleans business would naturally go the other way, and I suppose if you really had not direct interest in the Birmingham & Mobile Rd. you could interchange traffic with the M. & O. R. R. upon terms equally as favorable as with the Mobile & Birmingham. Nevertheless, it naturally belongs to your system, if it belongs anywhere.

The P., T. & A. extends from Paducah, Ky., to Lexington, Tenn., connecting with the St. L., A. & T. H. R. R.; the Tenn. Midland from Memphis, through Lexington, to Perryville, Tenn., on the Tennessee River, the intention of the promoters having been to extend it from that point to Nashville and on east. The Nashville & Knoxville R. R. extends from Lebanon to Cookville and then up to Standing Stone, I believe it is called. The Tenn. Central is being graded from Standing Stone or Monterey (if that is the point), via Rockwood, to Harriman Jct., to a connection with the Cincinnati Southern and the Southern Ry., although they say they are going to extend to Knoxville and beyond. The Birm., Sheffield & Tenn. River R. R. extends from Sheffield south to a connection with the Georgia Pacific at Parriah, about 25 or 30 miles west of Birmingham. A little work has been done on the so-called Florence Northern R. R. (The lines referred to were pointed out on the map to Mr. Spencer.) The L. & N. has a line from Columbia, Tenn., to Sheffield, with branches to Pinckney and Napier, Tenn. The N., C. & St. L. has a line running south into this (Sheffield) territory. We have another line running north from Dickson across the country (pointing to map) to the Memphis line, perfectly worthless, so that we have that particular territory pretty well covered. The N., C. & St. L. own this line from Nashville to Lebanon.

Mr. Spencer. We have no use for most of these lines; and if the question should arise in a way that we would be consulted at all we would be willing to treat the question as the L. & N. R. R. desired and let them take care of their territory, we agreeing to keep hands out of it.

Mr. Smith. You say you would have no use for it. If that line was extended across the country from Nashville to Harriman Jct., it would make a reasonably good line from Nashville to Knoxville and from Knoxville, via Nashville, to Memphis.

Mr. Spencer. We would not want that; and I have no hesitation in saying we would not encourage any such thing, as matters now stand. The question of the Knoxville & Nashville R. R. has been broached more or less to us.

Mr. Smith. There is no question but what we have educated the various communities to expect better service between an important point like Knoxville and adjacent territory and the capital of the State, but I do not know what can be done.

Mr. Spencer. Suppose we put it in this way: In Tennessee, west of Nashville, we would cooperate with you in the way of your controlling that territory; in Tennessee, between Nashville and Knoxville, if we could not prevent new constructions, we to act jointly upon some plan, neither of us to promote new lines in there without the concurrence of the other, and the local situation should be such as to force action, we would act together. In the territory south of the Memphis & Charleston and north of the Georgia Pacific, and west of your main line, you would cooperate with us in our controlling that situation against further competition.

Mr. **Smith.** Well, as to the territory between Nashville and Knoxville; the promotion by the L. & N. of an extension of that line from Standing Stone to point of connection with the Southern Ry. at Oakdale or Harriman Jct. would not be antagonistic to the Southern Ry. inasmuch as it would enable us to furnish a special or local service between Knoxville and Nashville from which you would probably get about as much revenue for the short haul as you do down to Chattanooga and back. I have no objection to having an understanding that whatever we do there we will do after conference and concurrence with you. As to the Birmingham, Sheffield & Tenn. River, which is all there is south of the Memphis & Charleston, in Alabama, west of the L. & N., I have no objection to saying that I would be glad to have that property fall into the hands of the M. & C., and think perhaps it would be a good disposition of it. It would, of course, make another rather formidable competitor for traffic between Birmingham and Memphis, but that competition is now, so far as we are concerned, very formidable by the K. C. M. & B., which would still be the shortest line. What I am particularly anxious about is that it should not be extended into Birmingham as an independent line. I think this would be injurious to all of us who operate roads in that territory, bringing in as it will a disturbing element until something has absorbed it. If an independent line it would also tend to cause an extension from Sheffield north, making an independent system through all that country.

Now, I have learned, I say, from best information I have, that the recent attempt to raise money to extend the road into Birmingham has not succeeded, and it is reported that the experts sent out by a certain English interest to examine the proposed extension have reported unfavorably. I got that report from Mr. de Bardeleben, who seemed to be greatly interested, and, I think, who undertook to show the experts the road. Mr. de Bardeleben says that Musgrove undertook to steer them through his land, and, of course, did not show them the best territory and the best route, which would, of course, have taken them through his (de B.'s) lands. I think I told you that Mr. Cassatt said that one of their trust companies had some of the bonds and had been asked to join the scheme by surrendering the bonds or, at least, allowing a first mortgage for about $7,000 per mile to be a lien ahead of them, which they declined, as they did not propose to give up a first for a second mortgage bond. I think I would have accepted this, as the first mortgage bonds are not worth anything, and the second could not be worth less. This road will probably haul the fuel of the furnaces that have been constructed at Florence and Sheffield, if they are ever operated, because it is the shortest line connecting the coal region with those points.

Mr. **Spencer.** I do not want to imply any disposition upon our part to put money in any of these properties. We prefer not to do so unless we are forced to it. We must, if necessary, do the needful to protect existing interests. All that can be accomplished now is to reach, if possible, some general understanding, as to our mutual interests, and such division of territory as appears feasible, but without obligations on the part of either to buy anything.

Mr. **Smith.** I think both of us would be very glad if we could feel assured that these miserable abortions would remain status quo. We would be perfectly satisfied if all of these roads would remain just as they are; but it is not safe to assume that they will so remain for any great length of time, as some disposition will finally be made of them. There is so much money invested in them that an effort will be made, sooner or later, to realize something by investing additional money to complete and extend them. Now, to go on further south, we may assume that the Marietta & North Georgia or Knoxville Southern is your meat, if you want it, for nobody else can use it.

Mr. **Spencer.** I will retire gracefully in your favor.

Mr. **Smith.** When we get over into Alabama and Georgia, as I recall it, we do not strike any disturbing or threatening elements until we come to Montgomery and Alabama. I imagine it does not make much differenc [illegible] becomes of the East and West Road.

Mr. **Spencer.** I rather think not.

Mr. **Smith.** There is no local traffic on it, and unless it should be extended eastward to the G. C. & N., or something of that kind, it can not disturb you, as I can see, and I do not see if it was extended it would be a disturber to us. It might be used to disturb rates somewhat.

Mr. **Spencer**. Its only power to do us any harm now is its connection with the C. R. & C., is it not?

Mr. **Smith**. The last named goes with the Central, I suppose.

Mr. **Spencer**. The present scheme of reorganization so provides. It has been agreed to take it in, but upon terms that are unreasonably high as I understand it.

Mr. **Smith**. Well, now, let us see.

Mr. **Spencer**. Allow me to revert to a previous subject. You rather objected to my assumption that you would as willingly see the Erlanger system go into our system as to the C., H. & D. You have got your own line to Chattanooga from Atlanta, Augusta, and probably Charleston, a line which will probably bring as much business to you at Chattanooga to be sent north as we would bring, if not more. Our interest now is to turn business from south of Atlanta destined northeast over our Charlotte line; such traffic does not go to Chattanooga at all, as formerly. If destined to Cincinnati, Louisville, St. Louis, and the West, it goes on to Chattanooga; but with your line south and east of Chattanooga you will originate and take to that point northbound as much business or more than we will, and you are at no disadvantage as compared with us. This leaves out of consideration the Georgia Central Railroad. If the Georgia Central is controlled by us, as you assume, it will be simply as you control the N. & C., namely, by holding a majority of the stock. We would not under present conditions, or any conditions that we now foresee, incorporate the management of the Central line into that of the Southern. I think it would involve issues in Georgia which would do us more harm than good. Therefore the Central Rd. lines will be open to you to do business at Atlanta, just as they are open to us. We would leave them open exactly as I understand Mr. Thomas does his line at Atlanta to the Southern, the Georgia, Seaboard Air Line, and Georgia Central. You have an interest in the Georgia Railroad, and yet Mr. Thomas opens his lines to the Seaboard Air Line, just as he does to the Georgia Road. Therefore the control of the Cincinnati Southern by us as against the C., H. & D. would not, I think, be prejudicial to your interests or prevent your obtaining at Chattanooga a fair share of traffic from the territory south and east. We would, of course, favor it with our Chattanooga-Brunswick business. On the other hand, you would favor your line with the W. & A. and Georgia Railroad business, and the Georgia Central would be open to you as much as to us.

Mr. **Smith**. In referring to the Southern Railway not assuming control of lines north of a line from Jellico, Harriman Junction, and Chattanooga, I also had in mind your controlling all of the lines south of that point, or, rather, I had in mind that that would be a desirable condition of affairs, provided assurances could be given by both sides that neither party would cross the line, but would interchange traffic upon that line. However, I recognize that under existing conditions it is not feasible, that you will possibly acquire——

Mr. **Spencer**. It is not feasible by reason of your position; you have your Western & Atlantic.

Mr. **Smith** (continuing from where Mr. Spencer interrupted). Lines to the Ohio and Mississippi Rivers, and that it will probably be difficult for us to dispose of our interests south of Chattanooga. Now, if, as you say, the Central Railroad will, even if you do acquire a controlling interest in the stock, continue to be operated as an independent corporation, and will continue to interchange traffic with the L. & N. system of roads as heretofore, why, then, I can perhaps see that your control of the Erlanger system may not be injurious to the interests of the L. & N. R. R. Co., as it is certainly possible that in some respects it may be advantageous. I should certainly anticipate a very great improvement in the traffic management of that (Erlanger) system of roads. To go back to the other subject: We were discussing the East & West road. I overlooked another abortion down there—the Chattanooga Southern. I do not know who in the world wants it. With our Alabama Mineral division it would make a direct extension into Chattanooga, but it is utterly worthless locally, and we would operate it practically as a local line, the competitive business beween Chattanooga and the Southwest (New Orleans and Mobile) being so small that it would be of no practical value even if we could furnish a service to compete with the direct through line (the Alabama Great Southern), with the very superior service that it furnishes as compared with any that we could afford to furnish—so I have always looked upon the Chattanooga Southern as worthless to us. I can not see what it is worth to anybody else.

Mr. **Spencer**. It is not worth anything to us.

Mr. **Smith**. It parallels two of your lines. They have threatened to make extensions and combinations, and extend to Birmingham.

Mr. **Spencer**. Have you any faith in their ability or the ability of any of those people to do such a thing?

Mr. **Smith**. It all depends upon the promoters. If they could get a party like Huntington and offer to give him the Chattanooga Southern and the East & West Railroad and show them lots of things around there that he could tie together and make a system of, somebody might put money in it. The East & West is represented by Mr. Eugene Kelly. How he ever became interested in it I do not know. I imagine he is getting too old and conservative to throw away any more money there.

Mr. **Spencer**. He is more than conservative now.

Mr. **Smith**. I think perhaps we can let those two roads work out their own salvation. I do not think they need give us any anxiety at all at present. There is an uneasiness on the part of the K. C. M. & B. to extend. There were some intimations two or three years ago that they ought not to have gone to Birmingham without going farther. That is, of course, utter nonsense, and I think Mr. Nettleton is too sensible a man to ever favor anything of the kind. He is a conservative man. I do not understand how he was ever induced to favor the construction of the road from Memphis to Birmingham. As I told you the other day, they have had a very sad experience. The road was an expensive one to construct, and they agreed to cut off their coupons for five years. The five years have expired, and, if I remember correctly, his letter to me stated that they had cut down their bonds sixty per cent and had agreed to go without interest on the remaining forty per cent for one or two years and then pay 1, 2, 3, and 4 per cent; so under those circumstances I do not think they will become a disturber. They have had an experience they will not get over for some time. There is another little road, called the Birmingham & Atlantic, which runs to a connection with you at Pell City; also running over to Talladega from one point on your line to what is now another point on your system. I imagine no one wants it. You know these people—Ladenburg, Thallman & Co.

Mr. **Spencer**. There is some Pennsylvania money in that, too; not Pennsylvania Railroad.

Mr. **Smith**. I think not.

Mr. **Spencer**. Did not a lot of people in the pine-timber region of Pennsylvania put some money into sawmills there?

Mr. **Smith**. There were some people by the name of Rogers that built that road out to sawmills, and they kept making extensions until they finally got it over to Pell City, and then they got some Jew bankers, Steiner Bros., of Birmingham, to sell the bonds. Steiner went East and managed to unload them on Ladenberg, Thallman & Co., and I do not think anybody else has any interest. Of course, the bonds take the property. I think the Rogers have been managing the property for them—did until recently, and I think they have exhausted the supply of timber. There is some brown ore on the line, and if the furnace at Talladega was running they might haul some. However, it does not make any difference. If anybody wants the road they can have it. Now, we come to Montgomery and Atlanta, and into this nest of roads; Savannah, Americus & Montgomery, Atlanta & Florida, Georgia Southern & Florida, and Macon & Birmingham.

Mr. **Spencer**. The Macon & Birmingham is dead for the time being, and I think, for a long time to come.

Mr. **Smith**. It's a part of the Georgia Southern & Florida.

Mr. **Spencer**. In this way; that the Georgia Southern & Florida guaranteed the bonds of the Macon & Birmingham. The G. S. & F. must now be sold under its first mortgage and that will, of course, dispose of the guaranty on the Macon & Birmingham bonds. I do not know that the G. S. & F. is of any interest to us particularly. It is one of those roads with a certain amount of vitality and a certain power of position that make it necessary to watch it. It connects at Macon with the East Tennessee line and with the Georgia Central. If it should ever be sold at a reasonable figure, one at which it could take care of itself, we might have something to say about it.

Mr. **Smith**. Where would you put it, with the Central System, or with your own?

Mr. **Spencer**. That, I have not considered; I suppose with ours. Yet, if there should be any object in putting it with the Central I should not care one way or the other. I have never believed——

Mr. SMITH. Under the circumstances just described, we will prefer to see it controlled by the Central.

Mr. SPENCER. Under a general all-around cooperation with you, I see no objection to that. I have never believed in the G. S. & F. as a Florida line as I have looked at it. I do not think that a line into Palatka, as Florida business now runs, is of very great value, in comparison with two such systems as the Plant and Florida Central & Peninsular. As to the shipment of fruit and vegetables, of course, it is in a section that is productive; but the passenger business, I do not see how it can do any considerable amount of it.

The advantages of the other lines, reaching both the east and west coasts of Florida, are such that they would continue to command the cooperation of northern connections, and I think the value of the G. S. & F. is in preventing it from demoralizing things any more than in the amount of business it could furnish. Of course, the timber through southern Georgia was a factor of some importance when the road was first built. I understand (I have never examined it) that it is not exhausted, and that for some little time to come, the traffic in lumber will be valuable, although not extensive.

Mr. SMITH. Now, then, the Atlanta & Florida.

Mr. SPENCER. The Atlanta & Florida I would decline to have anything to do with.

Mr. SMITH. What is going to become of it? Let it eke out a miserable existence?

Mr. SPENCER. Yes; it has no terminals in Atlanta. It had a contract with the East Tennessee road, but at the sale of the East Tennessee I annulled it, and they are on our property here by sufferance, subject to a 30-day notice; you know that getting into Atlanta independently in shape to do business is now a difficult thing to do.

Mr. SMITH. Now, this Georgia, Midland & Gulf?

Mr. SPENCER. This road is in the hands of a few New Yorkers represented by grannies of the Tradesmen's Bank. They have had recently to scale their interest. They are struggling along. They have a fairly well-built road for that country, but the local business is necessarily thin. Their business out of Columbus is principally cotton, in competition with the Central. Its value simply that of a little local feeder to either the E. T. or Central. The Central would, of course, like to see it controlled, because it makes the only competing line out of Columbus to the North. The Columbus Southern competes for cotton to the South and gives it to the S. F. & W. so that competition would not be destroyed if the Georgia, Midland & Gulf was controlled. It has been brought to our attention several times; I have done nothing with it at all and have no intention of doing anything.

Mr. SMITH. There are several roads in that territory such as the Macon & Northern, etc.

Mr. SPENCER. The Macon & Northern is included in the Central reorganization and on the most outrageous terms. Brown Bros., bankers, Baltimore, control it. They made a combination with R. T. Wilson, Wilson having some interest in the Savannah & Western, and between them they extorted their own terms from the reorganization committee (Ryan & Thomas). The Macon & Northern is a thorn in our side, because of its connection with the Seaboard Air Line, and Brown's interest in both. He now says that if the Central does not carry out the agreed terms with him he will then go in with the G., C. & N. and take that line to Macon, all of which is another means of annoying us and possibly of forcing terms of sale. If it is a question of who will get tired first, I have faith in the other fellow's getting tired first.

Mr. SMITH. There is another road there, the Jug Tavern road. I did not know but what you would like to have an interest in that. It strikes you at Gainesville.

Mr. SPENCER. Yes; it is the "Triangle" road, and ought to be killed—narrow gauge. We do not want it unless you want to give it away with an endowment fund added, sufficient to take care of it for life.

Mr. SMITH. I do not know there is anything more to be said about the Port Royal & Augusta and your interest in the Georgia road, Atlanta & West Point, and Western Railway. We had a short talk about them the other day.

Mr. SPENCER. I do not see that you can change in any way what I then said.

Mr. SMITH. As I understood you then, you are willing to favor disposing the interest of the Central Railroad in the Port Royal & Augusta, and its interest in the lease of the Georgia——

Mr. Spencer. Not in the lease of the Georgia, did I?

Mr. Smith. That is the way I understood you, but that you were not then prepared to say that you would favor disposing of the Atlanta & West Point and Western Railway. That is the way I got it. That is the advantage of having a stenographer, so that there can be no question about it.

Mr. Spencer. I did not intend that. I think you will recall that I said at the time that if the Central's interest in the Georgia should be disposed of on the ground that the two undivided half-ownerships gave no one control, the effect would be to immediately put the Western Railway in the same position.

Mr. Smith. It is practically there anyhow.

Mr. Spencer. What I intended to say then and tried to make clear, is that I would favor the sale of the Port Royal & Augusta road to you: that if you had that you would be in precisely the same position as if you had acquired the South Carolina Railroad, namely you had access to it and you would have your line to Charleston. Let the Georgia Railroad question stand where it is. That would be your position if you acquired the South Carolina road.

Mr. Smith. In all of our plans we have anticipated that if we did get the South Carolina Railroad we would have no difficulty in acquiring the interest of the Central Railroad in the lease of the Georgia, and I had always hoped to secure their interest in the line from Selma to Atlanta. If we were sure we could not get the interest of the Central in the Georgia, I do not think we would want any road beyond Augusta. They have at different times offered or talked of taking our interest, and in 1884 I undertook to dispose of it to them. Raoul offered to take it if we would pocket our losses, and at that time I thought he ought to make good our losses. They had not been great up to that time. There was not very much difference between us, but the matter was not very seriously taken up. Again, under the Inman-Calhoun management, an agreement, subject to approval, was made whereby they were to take our interest in the Georgia and lease the Western & Atlantic.

Mr. Spencer. I have heard something of that.

Mr. Smith. But when we got to New York, Inman did not approve of it, and it was dropped. I do not recall what action our board took; I think they approved of it. I can not, without refreshing my memory, speak positively about it. Let me see; it was Calhoun, Alexander, and myself; I do not recall who else. It was a preliminary agreement and was reduced in writing and must be in our files somewhere; anyhow, I have forgotten it. But the situation was changed by the East Tennessee acquiring the Cincinnati Southern and Alabama Great Southern, and I said we ought to go beyond Chattanooga and take the Western & Atlantic, and finally, it was agreed that they would make but a nominal bid, and that we should take it. It seems to me something ought to be done.

Under the present management of the Central all they seem to do is to try to smother the Georgia Railroad. It has insufficient equipment, has no capital account, and they need rails. Comer did, after a great deal of trouble, consent to putting in some more rails, because the track became unsafe, but he has up to this time refused to consent to the purchase of equipment, when it could have been done upon favorable terms; gives as an excuse the condition of the Central road, but he shows a disposition all the time to do everything he can to break down the Georgia road. He will spend money sometimes, I think, to keep business from going over the road. He will compete for traffic which I believe would yield a profit in the one-half, if he would let it go its natural channel, while the long haul probably results in a loss; in other words, take business, say, from Atlanta and haul it way around to Augusta, and especially to Charleston. He seems to have a most vicious spite against it. This sort of thing is not going to do. If he follows it long, it will result in getting into court and asking for a trustee. Then, it creates an ugly feeling against the Central Railroad. There is a feeling now among the stockholders of the Georgia road; they are uneasy, the Central road is broke, and if the Louisville & Nashville becomes bankrupt, it would affect their interests. It keeps up the appearance of the Central Railroad trying to bottle up the Georgia road. All unfriendly action is now to the Georgia Railroad's stockholders, especially to the Phinizy's, who are quite large stockholders, and it may be used to the disadvantage of all of us in a general way. In other words, it may make it more difficult to prevent unfriendly legislation, and things of that kind, and I really think it would be to the interest of the Central Railroad, and perhaps of yours, to turn the Georgia over to us. It would have a mollifying effect upon public opinion if that property were turned over to the Louisville & Nashville Railroad Co.

Mr. **Folk.** Mr. Smith, in your letter to Mr. Spencer, president of the Southern Railway, of date February 22, 1896, you say: "I was greatly disappointed to learn from Mr. Godfree that the T. C. & I. R. R. Co., and especially Mr. Ned Baxter, jr., who had indorsed for Mr. Jere Baxter to the amount of $75,000, would, under the arrangement, be paid in full. As you know, I was very desirous that these parties should lose their investment." Why were you desirous that those parties should lose their investment?

Mr. **Jouett.** We object to that, your honor, as it certainly has no bearing on this issue. It is a matter, more or less, of personalities and not a question bearing upon this issue.

Mr. **Folk.** It has a direct bearing on the Tennessee Central.

Chairman **Meyer.** The objection is noted on the record.

Mr. **Smith.** I don't think I know. That is a matter that occurred 22 years ago. I don't know what induced me to make that remark. I can perhaps surmise, if you care for surmises.

Mr. **Folk.** Did you oppose——

Mr. **Jouett** (interposing). Do you want his surmise?

Mr. **Folk.** Proceed, Mr. Smith. I have no objection to his surmises.

Mr. **Smith.** Will you kindly read the question, Mr. Stenographer?

(The stenographer thereupon read the pending question as previously recorded.)

Chairman **Meyer.** You said you perhaps could surmise as to what your reasons were.

Mr. **Jouett.** You can give us an answer to that question or not—just as you like, Mr. Smith. If you care to give a surmise, all right; but, if not, then you do not have to. You can answer it or not, just as you see fit.

Mr. **Smith.** I surmised I wanted them to fail.

Mr. **Folk.** And why did you want them to fail?

Mr. **Smith.** I did not want them to build the road. That is a surmise, that is all.

Mr. **Folk.** Why didn't you want the road built?

Mr. **Smith.** Because I wanted to build it myself, under a previous arrangement I had had with the Southern Railway that we would acquire the road over to Harriman and form a route beyond, from Nashville to Knoxville.

Mr. **Folk.** You did not desire the road to be built?

Mr. **Smith.** No, sir; but the result was they went on and built it. They bought the Crawford road and built into Nashville, and the parties that promoted it lost something like $11,000,000 or $12,000,000, so they say; and the road is there and is a worthless piece of property, being operated by the courts, and the people who built it have lost their money.

Mr. **Folk.** You did not wish the Tennessee Central built because it would be a competitor of the Louisville & Nashville?

Mr. **Smith.** It would not have been a competitor. As I said, at that time I thought I wanted to have the road for the Louisville & Nashville and the Southern Railway as a joint line.

Mr. **Folk.** Do you recall when the city of Nashville voted on the proposition to issue $1,000,000 of bonds to aid the Tennessee Central?

Mr. **Smith.** I know something about that. That was years afterwards, though—many years after this occurrence. The city of Nashville voted, I believe, $1,000,000, for which they were supposed to have received stock, which is worthless.

Mr. Folk. Do you recall the filing of a suit by a man named McClanahan to enjoin the city of Nashville from issuing those bonds?

Mr. Smith. I recall a suit that was brought by a man by that name, I believe, but I don't know for what purpose, whether it was to enjoin the issuing of the bonds or to prevent the issuing of the bonds or not. It seems to me the suit was for the purpose of establishing the illegality of the vote.

Mr. Folk. Of the election?

Mr. Smith. I think that was it—the illegality of the vote to make the subscription.

Mr. Folk. This suit purported to have been filed by McClanahan and some other taxpayers of Nashville, did it not?

Mr. Smith. I don't know. I know that name McClanahan was connected with the suit, but I don't know who was associated with it. Personally, I know very little about it. I gave it no attention myself.

Mr. Folk. Did you know that the Louisville & Nashville Railroad Co. paid the attorneys who appeared for the petitioner in that case?

Mr. Smith. I think not.

Mr. Jouett. In reference to this matter, Mr. Commissioner, we object to the testimony because it is included in paragraph 12 of the Senate resolution, and, in our judgment, is wholly outside the jurisdiction of this commission. With respect to this, as in many other matters embraced in that paragraph, it may not be material or objectionable from our standpoint if the answers be given; but in view of it being, as we think, entirely out of the jurisdiction of the commission, we do object to this and to all other matters relating to section 12, and advise the witness not to answer the question.

Chairman Meyer. In conformity with previous rulings upon the same question, I shall direct the witness to answer it.

Mr. Folk. Do you refuse to answer that question, Mr. Smith?

Mr. Smith. By advice of counsel, I refuse to answer that question; yes, sir.

Mr. Folk. Do you know whether the Nashville, Chattanooga & St. Louis Railroad Co. paid the attorneys——

Mr. Smith. I don't know.

Mr. Folk. In that case for the petition?

Mr. Smith. I have no personal knowledge.

Mr. Folk. Do you know that $100,000 of the amount subscribed by the people of Nashville to aid the Tennessee Central was paid to the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co. by the Tennessee Central to have that suit dismissed?

Mr. Stone. We object to that, your honor.

Mr. Jouett. We make the same objection, your honor, and we give the same advice to the witness.

Chairman Meyer. And the same ruling on the part of the commission.

Mr. Smith. By advice of counsel, I decline to answer.

Mr. Folk. In 1907 did not the Louisville & Nashville Railroad Co. pay to the Nashville, Chattanooga & St. Louis Railway Co. $50,000, its share of this $100,000?

Mr Jouett. We make the same objection and we give the same advice to the witness.

Chairman Meyer. The same ruling.

Mr. Smith. I decline to answer the question.

Mr. Folk. Before this suit was dismissed were not the people of Nashville deprived of the advantages that ought to be derived from the Tennessee Central by and through a lease of the Tennessee Central to the Illinois Central and Southern Railway for three years?

Mr. Smith. I know nothing of it.

Mr. Folk. You mean to say you know nothing of that lease?

Mr. Smith. Of what lease?

Mr. Folk. Of the Tennessee Central to the Southern Railway and Illinois Central.

Mr. Smith. I know in a general way.

Mr. Jouett. If you do not understand the question I will ask the stenographer to read it to you. Please read him the question again, Mr. Stenographer.

(The stenographer thereupon read the pending question as previously recorded.)

Mr. Smith. I don't know.

Mr. Folk. Did you, Mr. Smith, in behalf of your railroad, participate in any negotiations that led to the abandonment of this McClanahan suit?

Mr. Jouett. We object, if your honor please, and give the same advice to Mr. Smith. It is bearing upon that same clause in paragraph 12 of the Senate resolution.

Chairman Meyer. The same ruling.

Mr. Smith. Under the advice of counsel I decline to answer the question.

Mr. Folk. It was your desire, as president of the Louisville & Nashville Railroad Co., to keep the Tennessee Central out of Nashville, wasn't it?

Mr. Jouett. Your honor, we make the same objection there as we have made to the others, as bearing upon the same question.

Chairman Meyer. And the same ruling.

Mr. Smith. Under the advice of counsel I decline to answer that question.

Mr. Folk. Did not the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co. refuse the Tennessee Central the use of the terminals at Nashville?

Mr. Smith. Why, certainly. The terminals there were created for the use of these roads, and not for the use of competitors, the Interstate Commerce Commission to the contrary notwithstanding.

Mr. Folk. The Louisville & Nashville Railroad Co. refused to make joint rates with the Tennessee Central, did it not?

Mr. Smith. I don't know.

Mr. Folk. Do you know whether the Louisville & Nashville Railroad Co. or the Nashville, Chattanooga & St. Louis Railway Co. have made joint rates with the Tennessee Central?

Mr. Smith. I don't know. I would assume they would to and from local stations, but as for what we call through traffic, the so-called Tennessee Central is in no position to compete. For instance, on business, say, between Atlanta and points north of Nashville it would come into competition with the Southern Railway, having its own line all the way through to Louisville, Cincinnati, and St. Louis, and the Southern Railway would not want to give up its long haul and to put the short haul over the Tennessee Central even if the lines north of Nashville were willing to cooperate, and it is the same with the business going the other way. Neither the Nashville, Chattanooga & St. Louis Railway Co. nor the Louisville & Nashville Railroad Co. would want to form through rates or make through rates with the Tennessee Central, say, from St. Louis or Louisville to Atlanta, when they have their own lines all the way through, and accept the short haul to Nashville in order to give the Tennessee Central the short haul over to the Southern Railway, provided the Southern Railway were willing. They would want to haul the business, if they handle it all, all the way from St. Louis or Louisville. So the Tennessee Central is in no position to become a party to through rates and through traffic; but there is no objection, so far as I can see, although I don't know what the practice is, with regard to forming through rates between local points on the Tennessee Central and points on connecting roads. I presume that is done, but I don't know.

Mr. Folk. Would you, as president of the Louisville & Nashville Railroad Co., permit the Nashville, Chattanooga & St. Louis Railway Co., which is controlled by the Louisville & Nashville Railroad Co., to enter into a joint combination route with the Tennessee Central and Southern from Memphis to Nashville and to Harriman and to the East?

Mr. Smith. I would not have anything to do with it.

Mr. Stone. We object, if your honor please. We do not think this investigation is intended to find out what President Smith would or would not do. The question is what he has done and what is being done, and for that reason we object to this question.

Mr. Smith. The rates as they exist are on file with the Interstate Commerce Commission, and to the same extent, I presume, with the State commissions.

Mr. Folk. Take traffic from the East going by way of the Southern to Knoxville and to Nashville by way of Knoxville, could it not go over the Tennessee Central to Knoxville and to Nashville?

Mr. Smith. It might or might not. It might go by way of Chattanooga.

Mr. Folk. Are there any rates from the East to Nashville and to Knoxville on the Tennessee Central?

Mr. Smith. I don't know. The Interstate Commerce Commission can give you that information.

Mr. Folk. Do you know about the purchase of the Tennessee Midland Railway by the Louisville & Nashville Railroad Co.?

Mr. Smith. The Tennessee Midland?

Mr. Folk. Yes.

Mr. Smith. The Tennessee Midland extends from Memphis to the Tennessee River, and was consolidated with the P. T. & A., I think. It was sold or placed in the hands of a receiver and sold, and the Louisville & Nashville Railroad Co. purchased it at bankrupt sale.

Mr. Folk. In 1895?

Mr. Smith. I think that is about the date.

Mr. **Folk**. And the same day the Louisville & Nashville Railroad Co. turned the Tennessee Midland over to the Nashville, Chattanooga & St. Louis Railway Co. to operate, did they not?

Mr. **Smith**. They turned what we call the Paducah and Memphis division over to the Nashville, Chattanooga & St. Louis Railway Co.

Mr. **Folk**. Why was this road turned over to the Nashville, Chattanooga & St. Louis Railway Co. to operate?

Mr. **Smith**. It was because it was believed it could be operated in connection with other lines to better advantage than with the Louisville & Nashville, and it tended to strengthen the Nashville, Chattanooga & St. Louis, which the Louisville & Nashville, as the owner of a majority of the stock, was largely interested in.

Mr. **Folk**. Was it because the Louisville & Nashville Railroad Co. could not operate it?

Mr. **Smith**. No, sir.

Mr. **Folk**. Was it because they could not operate it under the laws of Kentucky?

Mr. **Smith**. No, sir.

Mr. **Folk**. You are sure of that, are you?

Mr. **Smith**. That was not the reason.

Mr. **Folk**. Do you know that the Frankfort & Cincinnati Railroad was purchased by the Louisville & Nashville Railroad Co. in 1909?

Mr. **Smith**. Yes; but I have forgotten the date that it was purchased.

Mr. **Folk**. There was a suit filed in the Franklin circuit court to enjoin the Louisville & Nashville Railroad Co. from owning and operating the Frankfort & Cincinnati, it being a parallel line, and the court ordered the Louisville & Nashville Railroad Co. to dispose of its controlling interest in that road, didn't it?

Mr. **Smith**. "Parallel or competing line," I believe, was the term. That is a matter of record, I think.

Mr. **Folk**. The Louisville & Nashville Railroad Co. thereupon turned the Frankfort & Cincinnati Railroad over to a man by the name of Hoge, and took the note of Mr. Hoge for the purchase price, with the bonds and stock as collateral, and the Louisville & Nashville Railroad Co. continued to control the Frankfort & Cincinnati after this supposed sale to Mr. Hoge, did it not?

Mr. **Smith**. I think Mr. Stone knows more about that than I do. I really am not familiar with the details. As to the control, we have no control. It is a worthless piece of property, not worth controlling, and the probabilities are that the Louisville & Nashville Railroad Co. has lost quite a sum of money, practically all it paid for it.

Mr. **Folk**. Do not you control that road since its sale the same as you did before?

Mr. **Smith**. No, sir.

Mr. **Folk**. What is the difference since the sale as compared with before the sale?

Mr. **Smith**. It is controlled by the present owner.

Mr. **Folk**. By Mr. Hoge?

Mr. **Smith**. I believe that is his name.

Mr. **Jouett**. Mr. Charles E. Hoge.

Mr. **Folk**. You have nothing to do with the control or operation of that road since it was sold?

Mr. SMITH. Nothing at all.

Mr. FOLK. Has Mr. Hoge ever paid anything on his note?

Mr. SMITH. I don't know.

Mr. FOLK. Don't you know that he has not paid anything on his notes?

Mr. SMITH. No, sir; that is a matter for the accounting department. I don't know.

Mr. FOLK. Did Mr. Hoge pay anything for this road other than the note that he gave, secured by his stock?

Mr. SMITH. I don't know.

Mr. FOLK. Don't you know that he did not, Mr. Smith?

Mr. SMITH. No, sir; I don't. I really know but very little about it. I really know nothing about it.

Mr. FOLK. Was Mr. Hoge, at the time of this purchase, an employee of the Louisville & Nashville Railroad Co.?

Mr. SMITH. He never has been employed by them except that in the sense that he was at one time a member of a contracting firm that constructed railways for the Louisville & Nashville Railroad Co. I think he is a banker now.

Mr. FOLK. How was Mr. Hoge selected as the purchaser of this line?

Mr. SMITH. I don't know.

Mr. FOLK. The Louisville & Nashville Railroad Co. owns a majority of the stock in the Nashville, Chattanooga & St. Louis Railway Co., does it not?

Mr. SMITH. Yes, sir.

Mr. FOLK. And you are on the board of directors of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. SMITH. I am.

Mr. FOLK. What other directors of the Louisville & Nashville Railroad Co. are on the board of directors of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. SMITH. I think I am the only one.

Mr. FOLK. You are the only one?

Mr. SMITH. Yes, sir.

Mr. FOLK. Can you tell us, Mr. Smith, whether or not the Louisville & Nashville Railroad Co., through its stock ownership in the Nashville, Chattanooga & St. Louis Railway Co., controls the Nashville, Chattanooga & St. Louis Railway Co., as to its general traffic and solicitation of traffic?

Mr. SMITH. It does not. As owner of the majority of stock, it elects the board of directors, or can do so. There has been no contention between the majority and minority owners of the stock since the Louisville & Nashville Railroad Co. acquired the majority of the stock. At all elections of boards of directors since that time it has been unanimous.

Mr. FOLK. Wasn't there an agreement between the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co. as to division of territory?

Mr. SMITH. Yes.

Mr. FOLK. And the solicitation of traffic?

Mr. SMITH. Yes; made in 1872.

Mr. FOLK. And in 1906?

Mr. SMITH. That was merely a modification of the agreement made in 1872.

Mr. FOLK. Under that arrangement the Nashville, Chattanooga & St. Louis Railway Co. does not solicit traffic in certain territory?

Mr. SMITH. There is a division of territory, and all that that implies, that was made in 1872. I know something about that.

Mr. FOLK. Why?

Mr. JOUETT. Just let him finish his answer, Gov. Folk.

Mr. FOLK. Go ahead; I have no objection.

Mr. SMITH. That was brought about in this way: I have already stated it for this record, I believe, that my hobby since I have been in charge of traffic matters, ever since the year 1869, was to secure cooperation of connecting and competing lines in the maintenance of rates. In those days it was the universal practice when a new line was opened to inaugurate and prosecute a war of rates. If the new line came in and did not offer inducements in the way of reduced rates, the patrons had no use for them. They expected them to inaugurate rates, and if they did not offer reduced rates they did not know what they were built for—what they came in for. That was the universal practice, and usually resulted in bankruptcy.

When the Louisville & Nashville Railroad Co. acquired and constructed a line from Nashville to Montgomery, Ala., I thought I would see if we could not open one new line at least without a war of rates. After securing the approval of my executive, I negotiated an agreement with the traffic officials, subject to the approval of the president of the Nashville, Chattanooga & St. Louis Railway Co., to divide territory, throwing the traffic to the short line. An agreement was made whereby the Louisville & Nashville Railroad Co. agreed it would not receive property for transportation at Nashville via Montgomery and Atlanta and contiguous territory, and the Nashville & Chattanooga Railroad agreed that it would not receive property at Nashville for transportation to Montgomery and contiguous territory, leaving the property to move by the short and direct lines.

In addition to agreeing not to compete at Nashville, it was agreed that all property which the Louisville & Nashville Railroad received at Louisville or received from connecting lines from points beyond which reached Nashville, being destined to contiguous territory, would be turned over to the Nashville, Chattanooga & St. Louis Railway. And it agreed, for St. Louis and points beyond, for Montgomery and contiguous territory, that the property should be turned over to the Louisville & Nashville at Nashville. The Louisville & Nashville Railroad Co. modified that agreement of 1906, which modification was rendered necessary by the opening of the new line of the Louisville & Nashville from Cincinnati to Atlanta. That was an arrangement which, in my opinion, has kept both the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway out of bankruptcy. Instead of having the Louisville & Nashville Railroad contending for business via Nashville to Atlanta for Montgomery, and the Nashville, Chattanooga & St. Louis contending for transportation of traffic to Montgomery via Atlanta, they permitted the traffic to move over the short line. Where the points were about equally distant for both they continued to compete, which would include Macon, Savannah, and points beyond.

As I think I have already stated, the Nashville, Chattanooga & St. Louis Railway, and those lines, are both south of the Ohio and east of the Mississippi River, and they have been kept out of bankruptcy, and undoubtedly that arrangement has had much to do with it. I will use this as an illustration. Assuming three points 200 miles apart [holding up a piece of paper at this point on which the witness had drawn with a lead pencil a triangle], and will assume the rate is 1 cent per ton per mile, and assume the rate of 1 cent per ton per mile amounts to $2 per ton, and assume that the cost of transportation is one-half a cent per ton per mile, or $1 per ton, and assume that 1,000,000 tons are moved between these two points, it would yield a net revenue of $1,000,000. If it moved by the long line, the entire revenue would have been absorbed in the cost. That method of adjusting rates and the division of territory, for which I have struggled for a great many years, would be enforced by the Government if they controlled the roads and were operating them. That would be the result. I think it has been sustained by the decisions of the Interstate Commerce Commission.

Mr. Folk. Have you a contract for the division of territory with any other road?

Mr. Smith. Sir?

Mr. Folk. Have you a contract for the division of territory with any road other than the Nashville, Chattanooga & St. Louis Railway?

Mr. Smith. I am not familiar now with the various traffic arrangements. They are very numerous and very complicated, and if one does not make it an entire business to stay right with the business continuously he will know practically nothing about it. We should have such arrangements, I should say, with other roads, but I do not for the moment recall it. Oh, yes; I think there is an arrangement between what are known as the east and west lines; that is, a line drawn through Pittsburgh, Buffalo, et cetera, whereby the lines east of that line decline to compete for business going west and going south of the Ohio River into the Southeast, and the lines west of that line decline to compete for points east of that line for traffic coming around this way [indicating]. That was the arrangement or the division of territory which was made a great many years ago, and I presume it is still adhered to.

Mr. Folk. Between what roads?

Mr. Smith. Between all of the lines east and west of those lines, practically.

Mr. Stone. Does that include the Louisville & Nashville or Southern roads?

Mr. Smith. Yes; all lines.

Mr. Folk. Why did the Louisville & Nashville Co. purchase a majority of the stock in the Nashville, Chattanooga & St. Louis Railway Co., do you know, Mr. Smith?

Mr. Smith. There were a great many reasons, I think. It was connected with the company at the time and the management was in the hands of some rabid speculators.

Mr. Folk. The management of what road was in the hands of speculators?

Mr. Smith. The Louisville & Nashville Railroad from 1879 to 1880.

Mr. **Folk.** Did not the Louisville & Nashville Railroad Co. purchase a majority of stock in the Nashville, Chattanooga & St. Louis Railway Co. because the Nashville, Chattanooga & St. Louis Railway Co. was competing with the Louisville & Nashville?

Mr. **Smith.** The Nashville, Chattanooga & St. Louis Railway Co. was not competing. Oh, yes; the Nashville, Chattanooga & St. Louis Railway was operating very much as it is now on this division of territory at that time. They were competing, of course. It was competing from St. Louis to Nashville with the line from St. Louis via Evansville to Nashville for business to Atlanta. The business was as per this agreement for a division of territory which was turned over to the Nashville, Chattanooga & St. Louis Railway Co. at Nashville; that is, business brought by the line via Evansville and the business brought from St. Louis by the line via Evansville, or business brought from St. Louis by the Nashville, Chattanooga & St. Louis and connections from Montgomery to Nashville was turned over to the Louisville & Nashville Railroad at Nashville. There was competition up to that point, and competition beyond, under the arrangement for the division of territory. There was quite a large territory that was common to both. For instance, if the Nashville, Chattanooga & St. Louis Railway Co. brought in traffic from St. Louis destined to Macon or Savannah, Ga., it carried it over its own lines. If the Louisville & Nashville Railroad brought any traffic from St. Louis or Louisville destined to Macon or Savannah, Ga., or points beyond, it carried it over its own line via Montgomery. There was that competition, and there was the competition of facilities.

I put a different construction on the term "competition" from what most people do, and sometimes I think the Interstate Commerce Commission does not agree with me upon my definition of the word "competition." "Competition" means to most people a war of rates, a cutting of rates. If you do not offer a reduced rate you are not competing. They do not consider the competition of facilities as competition.

Mr. **Folk.** What were the advantages to the Louisville & Nashville Railroad Co. accruing by reason of the ownership by the Louisville & Nashville Railroad Co. of a majority of the stock in the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. **Smith.** One of the advantages is that we get the dividends on stock sometimes.

Mr. **Folk.** What other advantage is there?

Mr. **Smith.** The advantages of securing conservative management that will cooperate to secure the greatest amount of traffic at reasonable and uniform rates—a maintenace of rates, in other words.

Mr. **Folk.** The chief advantage is cooperation between these two roads in the maintenance of rates, is it?

Mr. **Smith.** Yes, sir; as, fortunately for both, now they are required by the Interstate Commerce Commission to do or else go to jail, so now it does not make very much difference who owns the road. You will find that in the past we have resisted being taxed to build competing lines because of the fear of destroying revenues by reduction of rates, rendering operations profitably impossible. Since the Interstate Commerce Commission has required the railways to maintain rates——

Mr. Folk (interposing). What do you mean by that?

Mr. Smith. I mean just what I say. Since the Interstate Commerce Commission required the railways to mantain rates——

Mr. Folk (interposing). You mean to maintain published rates, don't you?

Mr. Smith. I mean to main published rates, yes; or agreed rates, rates approved by the Interstate Commerce Commission, fixed by the Interstate Commerce Commission, that danger is very largely eliminated, and you will find that there will be little or no opposition on the part of railways to the building of competing lines, but they will, of course, object to being taxed to build competing lines.

Mr. Folk. Could the traffic department of the Nashville, Chattanooga & St. Louis Railway Co. lower any rate on the Nashville, Chattanooga & St. Louis Railroad, by publication, of course, with the Interstate Commerce Commission, without your permission, or without the permission of some other Louisville & Nashville Railroad official?

Mr. Smith. What of it? You say should——

Mr. Folk. I say "could."

Mr. Jouett. If you did not understand the question, we will have the question read, Mr. Smith.

Mr. Smith. I think I understand it. Certainly they could, and they do it; that is the worst of it.

Mr. Folk. You mean the Louisville & Nashville Railroad Co. does not control the traffic department of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. Smith. I certainly do.

Mr. Folk. Except to the extent of the contract to which you have referred?

Mr. Smith. In the division of territory; yes.

Mr. Jouett. I wish you would read that last question and answer.

(The stenographer thereupon read as requested.)

Mr. Jouett. Did you understand that last question? How did you answer it, Mr. Smith, "Yes?"

Mr. Smith. That last question had reference to the division of territory. That is what it referred to, wasn't it?

Mr. Jouett. Yes.

Mr. Smith. Yes.

Mr. Jouett. Your answer is "Yes?"

Mr. Stone. He said except as to the division of territory. It doesn't mean the amount of the rates.

Mr. Jouett. I know it doesn't.

Mr. Folk. Does the Louisville & Nashville Railroad Co. select all of the directors of the Nashville, Chattanooga & St. Louis Railway Co. or only a majority of the directors of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. Smith. The procedure is to send a proxy. A part of the stock of the Nashville, Chattanooga & St. Louis Railway Co. that is owned by the Louisville & Nashville Railroad Co. is with the Central Trust Co. as collateral for the unified 50-year 4 per cent bonds.

Mr. Folk. Is that the Central Trust Co. of New York?

Mr. Stone. Yes.

Mr. SMITH. That amounts to $8,802,400. There is in the treasury of the Louisville & Nashville Railroad Co. $2,681,700, or a total of $11,484,100. The procedure is for the trust company to issue a proxy for stock deposited with it, and the officers of the Louisville & Nashville, Railroad Co. issue a proxy for the stock in the treasury. That is sent to some of the officers or directors of the Nashville, Chattanooga & St. Louis Railway, and they hold a meeting, and, with the minority stockholders, select and elect the directors, the Louisville & Nashville Railroad Co. giving the matter little or no consideration. The Nashville, Chattanooga & St. Louis Railroad Co. is represented in the board of directors by citizens of Nashville, Memphis, Chattanooga & Atlanta. The object of the chairman of the board and others is to secure the influence of plutocrats or others that have interests in the Nashville, Chattanooga & St. Louisville Railroad Co., that is managed locally by what you might term a local directorate. I am perhaps the only one living outside of the State, except a director from Atlanta.

Mr. FOLK. Would you permit the Nashville, Chattanooga & St. Louis Railway to be operated contrary of the interests of the Louisville & Nashville?

Mr. STONE. Don't answer that. We object as to what he would or would not permit. We do not think it is in this investigation or is evidence of anything at all.

Chairman MEYER. It seems to me that point is well taken, as it relates to the future.

Mr. FOLK. Have you permitted the Nashville, Chattanooga & St. Louis Railway, in any instance, to be operated contrary to the interests of the Louisville & Nashville Railroad Co.?

Mr. SMITH. I do not think that matter has ever arisen. If the Nashville, Chattanooga & St. Louis Railway is operated in the interests of its stockholders, of which the Louisville & Nashville Railroad Co. is one——

Mr. FOLK (interposing). And the chief one.

Mr. JOUETT. Go ahead and finish your answer, Mr. Smith.

Mr. SMITH (continuing). It would inevitably be also operated in the interest of the Louisville & Nashville Railroad Co.

Mr. FOLK. The Nashville, Chattanooga & St. Louis Railway Co. being operated in the interest of its stockholders, and the Louisville & Nashville Railroad Co. being the chief stockholder, the Nashville, Chattanooga & St. Louis Railway Co. is then operated in the interest of the Louisville & Nashville Railroad Co.?

Mr. SMITH. Of the stockholders of the Nashville, Chattanooga & St. Louis Railway Co.

Mr. FOLK. The Louisville & Nashville Railroad Co. being the principal stockholder?

Mr. SMITH. Yes; it is benefited thereby.

Mr. FOLK. The Louisville & Nashville being the principal stockholder it is operated in the interest of the Louisville & Nashville Railroad Co.; isn't that correct?

Mr. SMITH. I think the Nashville, Chattanooga & St. Louis Railway is just now paying a higher rate of dividend on its stock than the Louisville & Nashville Railroad Co. is paying on its stock.

Mr. **Folk**. Mr. Smith, are not the traffic officials of the Nashville, Chattanooga & St. Louis Railway Co. governed by your advice in the matter of routing business?

Mr. **Smith**. No, sir.

Mr. **Folk**. You say they are not?

Mr. **Smith**. They are not.

Mr. **Folk**. You are sure of that—that they are not?

Mr. **Smith**. It is routed subject to the agreement for the division of territory, I assume.

Mr. **Folk**. I read you a letter which is already in the record, through Mr. A. R. Smith, third vice president of the Louisville & Nashville Railroad Co.

(Mr. Folk thereupon read the letter which is already in the record.)

Mr. Smith, how do you reconcile this letter with the answer you have just given?

Mr. **Jouett**. He has not read the letter yet.

Mr. **Folk**. Just read this letter and state how you reconcile the statements in that letter with the answer you have just given that your advice is not taken by the Nashville, Chattanooga & St. Louis Railway's officials with respect to routing traffic.

Mr. **Smith**. This letter evidently refers to shipments from Columbia, Tenn., which, by the Louisville & Nashville, is only 45 miles from Nashville. By the Nashville, Chattanooga & St. Louis I think it would be a haul south or southeast from Columbia to Deckert, and from Deckert, probably three times the distance it would if it goes over the short line. I seem to have expressed the opinion—at least I infer I did—that the Nashville, Chattanooga & St. Louis Railway Co., in pursuance of our policy of sending the business by the short line, should concede that traffic going north through Nashville to the Louisville & Nashville Railroad was a perfectly proper arrangement. Traffic going from Columbia to Atlanta would probably be conceded wholly to the Nashville, Chattanooga & St. Louis.

Mr. **Folk**. Why?

Mr. **Smith**. Because it is the short and direct line. The Louisville & Nashville would have to haul it to Montgomery around two sides of a triangle.

Mr. **Folk**. So they do take your advice sometimes?

Mr. **Smith**. When it is good; yes.

Mr. **Folk**. When it is good?

Mr. **Smith**. Yes; and if it is not they do not take it. If it doesn't suit them, they do not take it.

Mr. **Folk**. Do you wish to amend your former statement, in which you said they did not take your advice?

Mr. **Smith**. They take it when they think it is good.

Mr. **Stone**. The witness has never said that.

Mr. **Smith**. There is nothing in that letter to indicate any arbitrary action.

Mr. **Stone**. I understand the question of Gov. Folk that started this testimony was as to whether the Louisville & Nashville Railroad Co. did not control the traffic department of the Nashville, Chattanooga & St. Louis Railway Co., not as to whether he gave them advice or as to whether they took his advice.

Mr. FOLK. That was one question, and then whether he gave advice is quite another question. There are several questions.

Mr. JOUETT. He has explained it.

Mr. FOLK. Mr. Smith, the Middle Tennessee & Alabama Railway was purchased by the Nashville, Chattanooga & St. Louis Railway, Co., was it not?

Mr. SMITH. The Middle Tennessee & Alabama; that is a little road extending through Shelbyville toward Decatur Junction, isn't it?

Mr. FOLK. Yes.

Mr. SMITH. I think I made the negotiations, I may say, as the director of the Nashville, Chattanooga & St. Louis Railway Co., but it was taken over, when it was finally concluded, by the Nashville, Chattanooga & St. Louis Railway Co.

Mr. FOLK. You conducted the negotiations?

Mr. SMITH. Probably. Yes; I probably did.

Mr. FOLK. For the purchase of the Middle Tennessee & Alabama by the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. SMITH. Yes; I think so. The transaction occurred some years ago. I do not recall the details.

Mr. FOLK. Didn't this road threaten to compete with the Louisville & Nashville for traffic between Nashville and points south of Decatur?

Mr. SMITH. It could not compete with the Louisville & Nashville without the cooperation of the Nashville, Chattanooga & St. Louis; that is, the Nashville, Chattanooga & St. Louis did not participate in the traffic under the division of territory and it could not form a through line which would be considerably longer than the direct line of the Middle Tennesse & Alabama.

Mr. FOLK. Were you present at the meeting of the stockholders of the Nashville, Chattanooga & St. Louis Railway Co. when the question of the purchase of the Middle Tennessee & Alabama Railway came up?

Mr. SMITH. I don't know. I seldom attend a meeting of the stockholders for the Nashville, Chattanooga & St. Louis Railway Co.

Mr. FOLK. Don't you know, Mr. Smith, that every share of stock in the Nashville, Chattanooga & St. Louis Railway Co. represented at that meeting was voted against the purchase, except that of the Louisville & Nashville?

Mr. SMITH. No, sir; I don't know that.

Mr. FOLK. Do you know why it was done?

Mr. SMITH. I don't know that it was done. I don't think it was done. I don't think there was any division between the stockholders.

Chairman MEYER. Mr. Folk, this seems to be a pretty good point at which to stop.

Mr. FOLK. Let me ask him just one question right here, your honor. Mr. Smith, did the Louisville & Nashville Railroad Co. lend to the State of Alabama, in 1912, the sum of $249,000?

Mr. SMITH. I wish you would let me get through with this first.

Mr. FOLK. You have answered that question.

Mr. SMITH. In the first place, the road did not extend to Decatur. It extended only to Decatur Junction, some 2 or 3 miles from Decatur, on the east side of the Tennessee River. It did not get anywhere when it got to Decatur Junction.

In the next place, the fact that there was any opposition to the purchase of that road is news to me. I never heard of it before. There was opposition to the lease of the Paducah & Memphis division to the Nashville, Chattanooga & St. Louis by one man, Rogers, who was a large stockholder in the Nashville, Chattanooga & St. Louis, but I never heard before of any opposition to the purchase of this road. It was acquired for a very nominal sum. It was a worthless piece of property, and it was a rash venture on the part of a tie bidder, who made some money selling ties to the railroads and started to build a road into the timber, and after the timber was exhausted he had no further use for the road; at least, that is my recollection of it.

Mr. FOLK. Did the Louisville & Nashville Railroad Co. lend to the State of Alabama, during the year 1912, the sum of approximately $249,000?

Mr. SMITH. $249,994.91.

Mr. FOLK. That was during the year 1912?

Mr. STONE. Let him finish his answer.

Mr. FOLK. I thought he had finished his answer. I thought he had answered my question.

Mr. SMITH. The loan was made to the First National Bank of Birmingham, Ala., and was used with other funds furnished by other institutions to purchase warrants from the State of Alabama. No funds being available to purchase such warrants in the possession of the State, this loan was made by the Louisville & Nashville Railroad through the First National Bank of Birmingham, Ala., to tide over between the exhaustion of the resources——

Mr. FOLK (interposing). To tide what over?

Mr. SMITH. To tide the treasury of Alabama over the time from the interim when the resources were exhausted and the taxes for the ensuing period were collected, and the money was paid back with 4 per cent interest.

Mr. FOLK. How and by whom were arrangements made for the State of Alabama to borrow $249,000 from the Louisville & Nashville Railroad Co.?

Mr. SMITH. It was not made by the State of Alabama. It was made by the First National Bank of Birmingham, Ala.

Mr. FOLK. How do you know?

Mr. SMITH. Because I made the negotiations, with the consent and approval of the chairman of the board of directors.

Mr. FOLK. How did you know you were lending this $249,000 to the State of Alabama?

Mr. SMITH. I did not loan it to the State of Alabama. I loaned it to the First National Bank of Birmingham.

Mr. FOLK. Didn't you know, as a matter of fact, that the loan was for the State of Alabama?

Mr. SMITH. No, sir; it was to be used in the purchasing of warrants of the State of Alabama, like any other transaction of that kind will be made. I, in a small way, own some warrants of the State of Kentucky individually. The Louisville & Nashville Railroad Co., the banks, and other institutions bought the warrants of the State of Alabama, and when the State of Alabama got the money they paid it back, as the State of Kentucky is going to do when they get the money to pay for the warrants they have issued.

Mr. FOLK. Was it your desire, by this loan, to help out the State of Alabama?

Mr. SMITH. I don't know. It seems to me the purchase was quite legitimate. It was quite a legitimate thing for anybody who wanted to purchase them. They used our credit to get the money, if we didn't have it, and we loaned it in that way for the 4 per cent.

Mr. FOLK. I understood you to say that this loan was made to tide over the State of Alabama during some crisis.

Mr. SMITH. Yes. The State of Kentucky is in the same fix now, issuing warrants and people buy them. The only difference is that the State of Kentucky pays 5 per cent, while the State of Alabama pays only 4 per cent.

Mr. FOLK. Are you loaning any money to the State of Kentucky now?

Mr. SMITH. The Louisville & Nashville Railroad Co. is not, because the State of Kentucky can sell its warrants to people who want to invest in nontaxable securities.

Mr. FOLK. You also loaned the State of Alabama $249,000 in the year 1913, did you not?

Mr. SMITH. I don't know what the amount was.

Mr. STONE. We object to the question, because it assumes this loan was made to the State of Alabama, whereas the testimony discloses it was an investment in warrants issued by the State of Alabama, and the warrants were held until the State of Alabama could pay them off, with interest.

Mr. JOUETT. It was an accommodation to the teachers and everybody else who held the warrants.

Mr. FOLK. I will amend my question and put it this way: There was another transaction during the year 1913, amounting to $249,000, similar in character to the one you have described as being made in 1912, was there not?

Mr. SMITH. I think there were two transactions.

Mr. FOLK. Do you know of any provision in the charter of the Louisville & Nashville Railroad Co. that authorizes it to loan money either to a State or to a national bank?

Mr. SMITH. I don't know. I will have to refer you to our attorneys as to the rights, as to our borrowing and loaning money. I do know that we are continually making loans.

Mr. FOLK. To whom?

Mr. SMITH. To various industries and people along the line of our road.

Mr. FOLK. To people?

Mr. SMITH. Yes; to people who will, in our opinion, promote traffic.

Mr. FOLK. Can you furnish us with a list of those loans?

Mr. SMITH. That could be done, but I can't do it here.

Mr. FOLK. Did you know that this item of $249,000 in 1912 and this item of $240,000 in 1913 were carried on your books in such a way as to give no indication as to what they were about or as to their character?

Mr. SMITH. The procedure was to authorize, through the National Bank of Commerce of Louisville, as I recall it, the First National Bank of Birmingham, Ala., to draw for amount as these warrants were purchased up to a certain limit. The total amount advanced by the various interests which were interested in the purchase was much greater than the $249,000. I think it was a pretty large sum altogether. I do not know who furnished the remainder, except that the First National Bank of Birmingham, Ala., was interested, and, I think, induced other banks and possibly other interests to become parties to this purchase. It was done under the advice and supervision of Mr. R. H. P. Harding, then president of the First National Bank—that should be Mr. W. P. G. Harding, now at the head of the reserve bank of the United States, or whatever it is called.

Mr. STONE. That is right.

Mr. SMITH. He handled it.

Mr. FOLK. Can you tell us, Mr. Smith, why the books of the Louisville & Nashville Railroad Co. did not correctly reflect those loans and the purpose?

Mr. SMITH. I think they did. The National Bank of Commerce of Louisville charged it to the Louisville & Nashville Railroad Co.; at least I think so. I don't know. If they did not, I do not know why they did not.

Mr. FOLK. We had better adjourn here.

Chairman MEYER. We will adjourn until 10 o'clock to-morrow, gentlemen.

(Whereupon, at 5 o'clock p. m., an adjournment was taken until to-morrow, Friday, May 5, 1916, at 10 o'clock a. m.)

LOUISVILLE & NASHVILLE RAILROAD CO.

FRIDAY, MAY 5, 1916.

WASHINGTON, D. C.

The hearing was resumed at 10 o'clock a. m.

Before Chairman Meyer.

Appearances as heretofore noted.

Chairman MEYER. You may proceed, Gov. Folk.

Mr. Milton H. Smith, the witness on the stand at the hour of ad-ournment yesterday, resumed the stand, and having been previously uly sworn, testified further as follows:

Direct examination continued:

Mr. FOLK. Mr. Smith, did the board of directors of the Louisville Nashville Railroad Co. pass upon this $249,000 transaction involv-ng the State of Alabama, in 1912?

Mr. SMITH. You mean the money invested in the State warrants n the State of Alabama?

Mr. FOLK. Yes.

Mr. SMITH. No, sir.

Mr. FOLK. Why not?

Mr. SMITH. Why not?

Mr. FOLK. Yes.

Mr. SMITH. It was not submitted to them. The responsibility was ssumed by the chairman of the board and the president.

Mr. FOLK. The responsibility was assumed by the chairman of the oard and the president of the road?

Mr. SMITH. Yes, sir.

Mr. FOLK. Is it customary to expend or to invest amounts so large vithout any action by the board?

Mr. SMITH. Yes, sir; quite frequently it is left to the discretion of hose officers. Most of the more important transactions are submitted or approval.

Mr. FOLK. If you desired——

Mr. SMITH (interposing). They are submitted for approval at the nonthly meetings of the board of directors, but not such transac-ions as are of a temporary character. The money was loaned, at east it was invested in the State warrants which were paid as the State collected its taxes, with interest at the rate of 4 per cent per nnum.

Mr. FOLK. Were these warrants issued by the State of Alabama or this particular purpose, to raise this money?

Mr. SMITH. No. They were issued in payment of the obligations s they matured. They did not have the money, and they gave the warrants instead, and they were purchased by the First National Bank of Birmingham, Ala.

Mr. FOLK. The $249,000 in 1912, and the $249,000 in 1913, appear upon the books of the Louisville & Nashville Railroad Co. as an account with the National Bank of Commerce. The State of Alabama, so far as the books of the Louisville & Nashville Railroad Co. are concerned, does not appear to figure in the transaction.

Mr. SMITH. How is that? What were the last words of that question?

Mr. FOLK. I say the State of Alabama does not appear to figure in the transaction.

Mr. SMITH. The State of Alabama did not have anything to do with it. It had issued its State warrants, and they were purchased by the First National Bank of Birmingham, Ala., for account of the National Bank of Commerce, which acted for the Louisville & Nashville Railroad Co.

Mr. FOLK. How did you happen to invest $249,000 in State warrants of the State of Alabama at that particular time?

Mr. SMITH. Because the president of the First National Bank undertook to aid the State in conducting its affairs, the State being without the funds to pay its current obligations to tide it over until it could collect its taxes.

Mr. FOLK. It was to aid the State of Alabama, wasn't it?

Mr. SMITH. Well, yes; in a way, I suppose. If something of that kind had not been done, the State would have gone to protect, I suppose, and a bad condition of affairs would have ensued. I do not know what the State could have done without that aid.

Mr. FOLK. So you came to the rescue of the State of Alabama in 1912, did you not, in that way?

Mr. SMITH. There was no rescue about it, so far as the Louisville & Nashville Railroad Co. is concerned. The First National Bank of Birmingham, Ala., through its president, Mr. W. P. G. Harding, asked us to aid other interests, including the banks and possibly other railroads, although I don't know as to that, in furnishing the money to buy the warrants from those who held them and who wanted to realize. It was a mere matter of, I may say, patriotism on the part of the people who were active in the matter. It was not a very material point with the Louisville & Nashville Railroad Co. It either had the money or had the credit. It could borrow the money and then loan it again. It was really done to oblige, you may say, Mr. Harding, and to aid him in carrying out a plan to prevent the State of Alabama from going to protest.

Mr. FOLK. Was it your purpose in advancing this $249,000 to aid Mr. Harding or to aid the State of Alabama?

Mr. SMITH. To aid Mr. Harding in doing what he was trying to do for the State of Alabama. We were not so particularly interested, although we have always been trying to do what we could to aid the government. I think we make it a point of paying our taxes in advance. The taxes are payable, we will say, in December, and may be paid in September, and if the State needs some money we will pay them at the earliest date if we have the money. We try to get on on good terms and cooperate with the State authorities. We do the same thing sometimes with other branches of the government and municipalities, sometimes. Not long ago we loaned the city of Lexington some money.

Mr. FOLK. How much?

Mr. SMITH. I do not recollect the amount. We joined together to build some viaducts. The city of Lexington was to bear one-half of the cost. They did not have the money at that time and the Louisville & Nashville Railroad Co. agreed to advance the money, to be repaid. There was a future appropriation by the authorities to enable—well, not that way, either. The city had exhausted its resources for the current year, and in the future apportionment of taxes they will provide, or have provided, for this money that will be borrowed from us in this way, and later will repay us. We have done the same thing recently with the city of Birmingham, Ala. I believe we have loaned them $25,000 in the same way for building a viaduct. The city did not have the money, its resources for the time being were exhausted, and so we advanced the money, but we are to be repaid.

We did the same thing some years ago in the city of Columbia, Tenn. Sometimes we aid counties. Those matters are left to the discretion of the management.

Mr. FOLK. You do not aid States or cities outside of your territory, do you?

Mr. SMITH. How is that, Gov. Folk?

Mr. FOLK. You have not aided any States or cities outside of the Louisville & Nashville Railroad Co.'s territory, have you?

Mr. SMITH. Oh, no. We are not going into competition with the money lenders of the country generally. We were interested in building those viaducts. In the city of Columbia certain improvements were being made in which the city had to bear a part of the cost, and they did not have the money.

Mr. FOLK. So the motive of the Louisville & Nashville Railroad Co. in this $249,000 transaction of 1912 was patriotic and was done to aid the State of Alabama, through Mr. Harding?

Mr. SMITH. I do not know that it was patriotic. The Louisville & Nashville Railroad Co. has a great many millions of dollars invested, and it is probably more vitally interested in the prosperity of that State than any other interest, except people at large, and why shouldn't we cooperate with the State of Alabama if the State was in trouble? We try to make the State believe it is to their interest to cooperate with us. We have invested enormous sums in building branch roads in various parts of the State that will in time become worthless—roads that were built to develop coal lands, forests, etc.—and as the forests and the coal mines or the ore mines are exhausted the source of the traffic is exhausted, and the railroads, or many of them, will be worthless. Some of the roads, perhaps, or the more profitable parts of them, will be taken away from us by the United States Steel subordinate corporation, the Tennessee Coal & Iron Railroad Co., which the Interstate Commerce Commission has decided is a railroad which is a common carrier, and has given it a part of the rate—of the Louisville & Nashville Railroad Co.'s rate—and it turns around and says, "You let us have this road here or we will parallel it," so we have let them have the road. In other words, it is an exceedingly difficult matter to protect the property of a large corporation in 13 different States from confiscation by the people.

Mr. **Folk**. What people?

Mr. **Smith**. The people of the country, the people having a democratic government, or majority rule. People having a democratic government, with a majority rule, create commissions and other forms of government with power to confiscate—to, in one sense, destroy the value of the property to the owner.

Mr. **Folk**. Would you destroy or do away with our republican form of government because of that theory?

Mr. **Smith**. I do not think it is very material what I would do. As to choice of government I do not see how we are going to get on in this country except as a democratic government which says that all men are created free and equal and that the majority rule. We certainly can not hope to have an autocratic government, a beaureaucratic government, or a government by the aristocracy, and we can not get along in this country without the plutocrats. We must have the plutocrats.

Mr. **Folk**. What do you call yourself?

Mr. **Smith**. I am one of these free and equal, or apparently free and equal, people.

Mr. **Folk**. You do not belong to the plutocrats, then?

Mr. **Smith**. Oh, no, sir. I am not a plutocrat. On this subject, if you will permit me, I will read you something, since you are discussing government and the different forms of government. This is something——

Chairman **Meyer** (interposing). I do not recall the section of the Senate resolution or the order of the commission that covers that, but if you think it is pertinent, Mr. Smith, go ahead and read it.

Mr. **Jouett**. The governor has no objection to the Senate resolution.

Mr. **Folk**. I am trying to follow the witness in his wanderings.

Mr. **Smith**. This in an extract from a book entitled "American Statesmen: Andrew Jackson as a Public Man," written by William Graham Sumner, of Yale, now deceased, who was, in his time, in my opinion, one of the wisest and sanest of men.

Mr. **Folk**. Does this paper express your ideas, Mr. Smith?

Mr. **Smith**. Yes, sir [reading]:

> Democracy affirms that men are, may be, ought to be, were born, or were created, equal, and it determines that in politics they shall be treated as if they were so, facts to the contrary notwithstanding. The inequality of men in their industry, economy, prudence, self-control, etc., produces the most marked result in the different amounts of capital which they accumulate. For capital is the support and fortification of human existence, and a man of virtuous habits and right life secures his existence against destructive forces by accumulating capital. His capital is at once the reward of right living and the means of better living. At the same time it is a proof of inequality and the cause of inequality. The existence of capital is therefore a refutation of all dogmas of equality. If there were no capital men would sink to the level of the other animals and become approximately equal to each other when they were all equal to brutes. The advocates of equality consequently rage against capital which contradicts their theories. The inequality in the distribution of capital, which is at once the proof and the reward of inequal effort and virtue, is a still more favorite object of attack, but so long as men strive upward and away from their original brutishness, the inequalities in their being and doing will inevitably produce inequalities in their having and enjoying. Of all the superstitions which have ever been entertained by men, the most astonishing is the one which has been accepted during the last century, that the mass of men are by nature wise and good, although

universal experience proves that men become wise and good only by severe and prolonged effort. And yet the fate of modern democracy is to fall into subjection to plutocracy.

In its struggles against what is called "the money power," democracy strives against its fate, yet hastens it on. Democracy strives to banish the power of capital from open and admitted influence in political affairs. One of two results follows: (1) When the capital is combined with virtue and high principle it really is banished from all share in politics. The consequence is that the community loses the incalculable advantage which it might gain from the experience and good will of men who have accumulated capital by integrity or have managed inherited capital with honor and success, and whose assistance in resisting corrupt schemes, or in reforming laws which give chances to corrupt and crafty men to accumulate capital without industry or integrity, would be invaluable. (2) When capital is in the hands of corrupt and crafty men, it is driven to secret modes of influence, which undermine and destroy institutions, and legislation is molded to suit the ideas and modes of operation of the crafty and lazy instead of those of the honest and industrious.

We might as well expect to free ourselves from the pressure of the atmosphere as to abolish "the money power." The effect would be as mischievous in one case as in the other. What is true is that selfishness and cupidity constantly strive to make use of laws and civil institutions to divert one man's earnings to another man's use. This occurs whenever laws change at all that distribution of products which would be brought about by the free operation of economic forces. The modern industrial organization, including banks, corporations, joint-stock companies, financial devices, national debts, paper currency, national systems of taxation, is largely the creation of legislation (not in its historical origin, but in the mode of its existence and in its authority), and is largely regulated by legislation.

Capital is the breath of life to this organization, and every day, as the organization becomes more complex and delicate, the folly of assailing capital or credit becomes greater. At the same time it is evident that the task of the legislator to embrace in his view the whole system, to adjust his rules so that the play of the civil institutions shall not alter the natural play of the economic forces, requires more training and more acumen.

Furthermore, the greater the complication and delicacy of the industrial system, the greater the chances for cupidity when backed by craft, and the task of the legislator to meet and defeat the attempts of this cupidity is one of constantly increasing difficulty.

Finally, the methods and machinery of Democratic-Republican self-government—caucauses, primaries, committees, and conventions—lend themselves perhaps more easily than any other political methods and machinery to the uses of selfish cliques which seek political influence for interested purposes.

In the United States the Democratic element in public opinion has always been jealous of and hostile to the money power. The hostility has broken out at different times in different ways, as an assault on banks, corporations, vested rights, and public credit. Sometimes it seems as if "the money power" were regarded superstitiously, as if it were a superhuman entity, with will and power. The assaults on it are mingled with dread, as of an enemy with whom one is not yet ready to cope, but whose power is increasing rapidly, so that the chance of ultimate victory over him is small.

Now, that in a way confirms the statement I have made many times in my career as a trustee in the management of property of others in trying to protect their property. I have used the term that "Society, as created, was for the purpose of one man's getting what the other fellow has, if he can, and keep out of the penitentiary." To protect a large property, such as the Louisville & Nashville Railroad, in 13 States from confiscation is an exceedingly difficult matter.

Mr. Folk. Confiscation by whom?

Mr. Smith. All legislative bodies are a menace.

Mr. Folk. Confiscation by whom?

Mr. Smith. All legislative bodies are a menace. In action they are a calamity, and we have them, commencing with the Congress of the

United States, the State legislatures, the city or municipal legislative bodies, school districts, county organizations, and so on.

In our efforts to protect the property of the company we must do what we can to conciliate and placate and prevent, if we can in any reasonable way, injurious, destructive, or confiscatory legislation, and the enforcement of laws enacted by various legislative bodies, and they are continually making more and more laws. This applies not only to the property of railways, but it applies to all large accretions of capital.

I used to know quite well Mrs. Hetty Green. She inherited quite a large fortune. She is quite an elderly lady now, being some 80 years of age, I believe. If you were to meet her, and if you are at all on intimate terms with her, you will find that her plaint is that she has been struggling all her life to prevent people from getting her property away from her. They have not succeeded. She has succeeded in holding on to it, and it is probably eight or ten times more now than it was when she inherited it from her father.

Under such circumstances, why should not the Louisville & Nashville Railroad Co. assist the State of Alabama, or why shouldn't it also assist different communities or municipalities in creating facilities that are to be jointly used and to be used for the joint benefit of the patrons of the road, but to go outside the State and come in competition with money lenders, that is an entirely different proposition.

Mr. FOLK. So, as I understand you, Mr. Smith, you consider government by the people as dangerous, and you conceive it to be your patriotic duty to counteract it?

Mr. SMITH. No. What are we going to substitute? We do not want chaos. We do not want anarchy. We have got to have some form of government. We have a democratic form of government and it will stay with us. We have the power of the majority and they may in time, and I think they will, acquire such properties as the railroads. The people have gotten a taste, and they like the taste of the blood.

Mr. FOLK. They like the taste of what?

Mr. SMITH. They like the taste of the blood. They have had a taste of it. Of course, we will struggle all we can to still preserve property rights. I saw only a few days ago a statement, and a very wise one, by Mr. Daniel Willard, president of the Baltimore & Ohio Railroad, who thinks that public opinion is coming the way of the railroads, and that we are going to have a better chance. I hope it is so. At any rate, he as trustee and I as trustee must do what we can to protect the property for the owners as long as the ownership is recognized. I am only giving you my personal opinion when I say I think the Government, through its various agencies, will render the property of railways valueless, or very nearly so, to its present owners; and that, therefore, it is not necessary for the Government to buy the roads or to assume the obligations that it ought to assume. If it assumes the management, then I say it ought to assume some responsibility, but under the existing conditions it does not. It controls and directs, with the aid of labor unions—railway labor unions—without assuming any of the responsibility. There is no use saying we do not want a democratic government, when we haven't anything else to take its place. We must have some form of government.

Mr. FOLK. You conceive it to be your duty to protect your road against democratic government, do you?

Mr. SMITH. No; against unjust, injurious, and confiscatory legislation; and also, so far as possible, to protect it against the confiscation of labor unions, from the demands of the labor unions, for an increased part of the revenues derived from conducting the business. They are continually asking for more and more, and we must do what we can to induce them to be reasonable and merely perform our duties as trustees.

A great corporation is necessarily managed by bureaus. An aggregation of capital of various individuals is invested in an enterprise and those individuals can not give it their individual attenton. They necessarily must employ agents or create bureaus to handle the business for them and they make mistakes. It is not an easy thing to get a competent management for these large institutions. People of ability, especially commercial and business ability, will not work for a stated stipend, and therefore these large affairs have to be conducted by mediocre people, and sometimes incompetent people and sometimes dishonest people, but it is the best they can do—the best the owners of the property can do. They do the best they can to get a capable and honest management for their affairs, but they have many difficulties.

Mr. FOLK. The anarchist, Mr. Smith, says all legislative bodies are a menace: in action they are a calamity.

Mr. SMITH. That is my opinion.

Mr. FOLK. You say all legislative bodies are a menace, and in action they are a calamity. Will you explain the difference between your theory and the theory of the anarchist?

Mr. SMITH. I don't know about the anarchist. I can not explain the difference. I do not know that the anarchist has any. Anarchy means no government.

Mr. FOLK. But you believe that legislative bodies are a menace?

Mr. SMITH. Yes; undoubtedly. That is the curse of our form of government. There is too much legislation; too many laws; but you can't stop it. When you give a man power, what is it good for unless he utilizes it? You pass a law and give power to people, and it is a great temptation, even if there is no occasion for it to use it. What is the use? Here you have created a body and have given them the power to make your rates. The rates may be going on all right. Take a State commission. You will have a number of these railroad commissions that will go along and everything is all right and they will do what they can to insure cooperation between the railways and the people: then some man comes along and gets into it who has an ambition to make a noise: to be United States Senator, governor of a State, or the President of the United States, and he thereby very promptly creates trouble. He has the power. Why shouldn't he use it? That is the thing I am talking about. I am about the only one that deprecates overlegislation, the passage of laws and laws, or, as has been said, the people of this country are the greatest lawmakers and the greatest lawbreakers of any people in the world.

Mr. Folk. So you think there is a constant struggle between the corporation you represent and the legislative bodies?

Mr. Smith. Not constant. It is somewhere all the time, though.

Mr. Folk. If all legislative bodies are a menace, you would abolish all legislative bodies, would you not?

Mr. Smith. No; I don't think I would. What would you do? You have got to have some form of government.

Mr. Folk. Would you substitute the power of the railroads, for instance, for the power of Congress or the power of State legislatures?

Mr. Smith. No, sir.

Mr. Folk. What did you mean by saying all legislative bodies are a menace?

Mr. Smith. The menace arises from their power to enact bad laws or unjust laws or confiscatory legislation. As to the railways assuming the powers of government, it is absurd. There is a great deal said and a great deal of legislation tending that way to say that the owners or the management of railways must keep out of politics; the railroads must not participate in politics. What is politics? One definition is "artful or dishonest management to secure the success of political candidates or parties—political trickery," and a more accurate definition is "a dirty scramble as to who shall hold the offices—administer the government." Those who are in the employ of railroad companies are prohibited by their vocation from holding offices. They may vote, but on account of their prohibition they may not take as much interest in the scramble for office as do those who are not subject to like prohibition. Therefore, the only inducement for railroad companies to enter politics—become parties to the dirty work—is to protect their property from injurious, destructive, and confiscatory legislation.

When the contending parties are about equally divided they are apt to refrain from antagonizing the railroad interests, or any influence that may be exerted to their disadvantage. Their respect, however, for such influence depends upon whether the railroads or other interests are alert or aggressive in their own self-protection.

The proceeding in which I am now testifying is a graphic illustration of the methods resorted to by politicians in their efforts to obtain preferment, exercise political power, and incidentally enjoy the elation derived from contentions. It also illustrates how railroads are forced to participate in politics.

Politics in the State of Tennessee have for many years been in a deplorable condition. The contention for office and administering of the laws extending to the State executive and State legislators, election of judges, executives in legislative and municipal—so much so as to shake one's faith in the success of democratic government.

In these contentions Senator Luke Lea——

Senator Lea (interposing). May it please the commissioner, I would like to be heard at this point here. At Nashville, when I was notified that this hearing was to take place, I understood it was for the purpose of the examination of Mr. Smith along certain lines which would, if he refused to answer the question, be the basis of a suit to determine the power of the commission to have this question answered. Under those circumstances and conditions, Messrs. Pitts and McConnico, who represent me, concluded it was not necessary for them to come here. There has been no question asked by the attorney or counsel for the Government that involves any question of me, of my business or political activities. I claim I am not a public carrier, and that I am not the subject of this investigation. But be that as it may, if the witness is to proceed not along the lines of the examination by counsel for the commission, but is to become the witness of the railroads or carriers for the purpose of discussing me, I am entitled to be represented at that time by counsel. So I ask that this part of the examination be suspended until I have an opportunity to be represented by counsel, and so that it can be made the basis of cross-examination.

Mr. STONE. I was not aware that there was any limitation upon the testimony of Mr. Smith. He was in Nashville for three days, and not called to the stand as a witness. He has come here at a great sacrifice of time and labor to the City of Washington, a thousand miles almost away from Louisville, where this investigation could have been heard much better, so far as the Louisville & Nashville Railroad Co. and its officials are concerned at Louisville, and because Senator Lea has not brought his own counsel here for the purpose of interrogating the witness on an examination in chief, or by our cross-examination, is certainly no fault of ours. Besides, the witness is simply responding to the questions propounded by Gov. Folk in a legitimate and proper way, in a way that is entirely responsive to this matter of government and politics, etc., which he has brought in by his questions. So we think it is nothing more than right that the witness should be allowed to proceed in his own way to answer these questions, especially as to the politics prevailing in the State of Tennessee, and as to the participation in that political condition in Tennessee by Senator Luke Lea, who is a party to this proceeding, having brought a complaint against the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co., which has been consolidated with this proceeding instituted in pursuance of the Senate resolution introduced by Senator Lea himself.

Why should not his participation in the politics of Tennessee be inquired into? It is perfectly legitimate, natural, and logical. We maintain the witness ought to be allowed to finish the statement he had started upon, even if it does trend toward the political activities of Senator Lea in Tennessee. He ought not to complain as a party to this suit, and whether he has brought his counsel here or not is certainly no good reason why this witness should not be allowed to proceed with his testimony in his own way, when it is entirely responsive to the questions that have been asked by counsel.

I do not think Senator Lea has any cause of complaint that Mr. Smith has mentioned his name in the course of his testimony and given his views, because on the one side the Louisville & Nashville Railroad Co. is a party defendant, and he on the other side is a party complainant.

Mr. FOLK. Let me ask one question right here. You spoke of the participation in Tennessee politics. Can you at this point tell us how much, if anything, the Louisville & Nashville Railroad Co. contributed to the campaign fund in Tennessee?

Mr. STONE. We think we should have one question at a time, your honor.

Senator LEA. May it please your honor, I think I may say something in reply to Judge Stone at this point.

Mr. STONE. We do not think counsel ought to break in with questions of that kind, especially when it is mere repetition of what was asked yesterday, but having asked one question, and the witness being in the midst of answering it, he should be allowed to go on and finish his answer.

Chairman MEYER. I understand the witness is instructed not to answer that particular question, no matter when it is asked.

Mr. STONE. Yes.

Senator LEA. I think Col. Stone is incorrect in one or two things. He stated that Mr. Smith was called during the three days' investigation in Nashville. The record, I think, will bear me out that Mr. Smith was called, but that out of requests which were made by his counsel about half past 5 on Saturday afternoon, Mr. Smith——

Mr. SMITH. I did not leave the room until 6 o'clock or half past 6.

Senator LEA. About the hour of 6 or half past 6 Mr. Smith was coming there so that he could answer a few questions and make the record that would go to the courts. May it please the commission, my position at this time is not that I am going to object. That is a bridge that I am going to cross when I get to it in regard to all questions as to my political activity, but the position of the railroads is this: We are going to come into this investigation. We are going to refuse to say how we participate in Tennessee politics; how we participate in Georgia politics; how we participate in Alabama politics, or Kentucky politics; we deny the right of the commission to ask these questions, and while, on the advice of counsel, we decline to answer those questions, we reserve the right to discuss all phases of the political activity of an individual, not a carrier. Even Col. Stone will not say that this commission has any power to issue any order whatsoever in regard to a plaintiff who is not a carrier, and who comes here solely and entirely on the one single question as complaining of the right of the railroads to issue intrastate free transportation.

In regard to the rest of this investigation I am not a party; I am here present because I desire to be present in the event any question in regard to free transportation is asked.

Under the announcement made by the commission at Nashville, I submit it was the reasonable interpretation to place upon that that unless myself or my counsel were notified on Tuesday that other features of the investigation would be pursued it was not necessary for them to be present. I submit to Col. Stone and to Mr. Jouett that Mr. Smith's ideas in regard to me will lose nothing by the preservation for a short time, and I am sure they would desire, under similar circumstances, to be accorded what I insist is my right, namely, to be represented by counsel in the event that question is presented, as I have counsel of record in this matter.

Mr. FOLK. I have just this suggestion to make. The motives of Senator Lea are not under inquiry in this investigation. He may be a fit subject for angel's wings or he may be deserving of devil's horns for all I know. Whether he is or not is not a matter about which we are to inquire here. The question here is as to the practices of the Louisville & Nashville Railroad, not as to the practices of Senator Lea. The question is, what has the Louisville & Nashville Railroad been doing, and not what has Senator Lea been doing.

Heretofore we have kept out of this investigation the names of individuals. Only yesterday, at the request of the attorneys for the Louisville & Nashville Railroad Co., there was cut out the so-called Pizaro letter, containing the name of an individual, and it seems to me Senator Lea's objection is well taken, that his motives and his practices should not be made the subject of inquiry here, especially at this time, if ever material.

Mr. JOUETT. We have to differ from Gov. Folk as to whether or not Senator Lea's motives are under inquiry here. This is a very peculiar proceeding. The first hearing was one instituted by the commission in obedience to a resolution of the Senate of the United States, calling for an inquiry about the very matters of which Gov. Folk has been asking the witness all of yesterday. That resolution was introduced by Senator Lea. Subsequently Senator Lea filed a complaint as an individual, as a citizen, in which he complained of the practices of the Louisville & Nashville Railroad Co. with reference to the issuance of intrastate passes in the State of Tennessee.

Those two proceedings were then consolidated—we thought illegally so—and you will recall that at the Nashville hearing I filed a formal motion to set aside the order of consolidation and requesting that these two things might be heard separately, inasmuch as they were entirely distinct, the one from the other. That motion was overruled, and the Government spent three days in Nashville introducing its evidence. The case was adjourned to this place and at this time for a continued hearing. There was no suggestion, as Col. Stone has said, that there was to be any limitation upon the subjects about which the witness was to be examined.

Senator LEA. Mr. Jouett, may I interrupt you right there? I know you want to be perfectly fair in this matter.

Mr. JOUETT. Entirely so, Senator Lea.

Senator LEA. Did not I discuss with you and with the commission the advisability of merely having an agreed case in order to save the trouble of Mr. Smith coming here?

Mr. JOUETT. You did.

Senator LEA. And we agreed that the record should show that he was to be asked certain questions in regard to the use of money in political campaigns, and that he would decline to answer upon the advice of counsel. That was agreeable to you?

Mr. JOUETT. Surely.

Senator LEA. Yes. It was agreeable to me, too, as far as I had any relation with the case, in view of the fact that the order had been made consolidating every phase of the investigation with the other. It was Gov. Folk's suggestion that he did not desire to have the record in that case, that he did not think it would be presented with the same force to the court as if the witness had been actually present. From that did I not have the right to deduce the fact that that would be the line upon which this investigation would be made?

Mr. JOUETT. It is entirely true we endeavored to stipulate to have an agreed case to be taken to the court, but that matter was discarded. Gov. Folk did not agree to it. On the contrary, he insisted upon this hearing, and at this hearing he has gone not merely into the two or three questions which were under consideration there, but he has gone through the entire field covered by this investigation.

Now, then, simply because the complainant himself in the whole of this consolidated proceeding saw fit not to have his attorney here, when he himself is a lawyer, the mere fact he saw fit not to do that, certainly can not stop this proceeding and stop us from carrying on the investigation, that is, our side of it, you may say, in an orderly and in the regular way.

Gov. Folk has asked the questions which have brought this matter out. I do not want for one moment to do anything, or to appear to do anything, that is not entirely fair to Senator Lea, but the question as to his motives is directly involved in this case.

If you will remember, the answer that was filed gives as one of the reasons or makes one of the defenses as to why the commission is asked to dismiss his complaint the fact that he is not proceeding for the good of the general public, but in order to advance his own political ends. That is set out in the answer.

The commission in previous cases has held where a complaint is filed manifestly through spite or malice, or for some ulterior motive, the commission will not be a party to carrying those things out by its orders. That defense is distinctly alleged in this case. There is no demurrer to it, no question as to its sufficiency or legality. Therefore, the motives of Senator Lea, who has instigated the Senate investigation, as well as filed this complaint, are directly in issue. They would not have been put in the answer if they were not considered to be properly in issue. They would have been stricken out of the answer if the commission had assumed they were not properly in issue.

As to this witness, we do not think we ought to be required to be continually introducing him as a witness. He was at Nashville for three days, as Senator Lea has said. It was announced that the hearing would close at 6.30. At about 6 o'clock, when it was manifestly impossible to have examined this witness in any proper way upon the matters involved, he was called. He did wait until 6 o'clock and then went out to his daughter's to dinner, expecting to go on to Louisville. He thought of going on the night train. That is why he was not there at that particular time.

In view of those circumstances, and in view of the fact that Gov. Folk has gone into the minutest details of everything involved in this investigation, and has gone far afield into a discussion of other questions such as motives, beliefs, and political opinions of this witness in the way that he has, certainly it would be very unfair, and the greatest injustice to him, if he is not permitted now to finish his testimony on those matters, or on all subjects.

Senator **Lea**. Just one word, if the commissioner please, in reply to what Mr. Jouett has said. Mr. Jouett is also in error when he states that no action has been taken in regard to the answer which was filed by the Louisville & Nashville Railroad Co. Mr. McConnico, as my counsel, stated at the beginning of the investigation at Nashville, that we reserved the right to move to strike out the answer, or parts of the answer, of the Louisville & Nashville Railroad Co. or the Nashville, Chattanooga & St. Louis Railway Co. that were irrelevant, impertinest, and scandalous, as they were. Now, Mr. Jouett and Col. Stone ask the commission to do this: They ask the commission to permit a full and entire investigation of the activities of an individual who can not, under any circumstances, be within the jurisdiction of this commission for the purpose of issuing any order, and, at the same time, they absolutely take the position that witnesses for the carriers will not answer questions to lay bare their political activity. In other words, they say to the commission, We want the commission to issue an order or make a ruling investigating the politics of an individual who can not be bound by any order of the commission, and at the same time exempt the carrier who is subject to the orders of the commission from such an investigation, because even at this time, on yesterday and at Nashville, and at all times, as far as that goes, they have refused to answer any questions in regard to their political activities, the basis of which are political contributions, and I submit the commission will not make any such ruling as that.

Mr. Jouett. Senator Lea misunderstands our position. We do not ask for any order with reference to Senator Lea. We are brought here as a defendant, and one of our defenses is that this proceeding is not prosecuted in good faith for the public good, and we are merely preparing our defense.

Senator Lea. If that is the question, does this answer deal directly or indirectly with the subject of free transportation, which is the only thing here before the commission as petitioner?

Mr. Jouett. As petitioner that is one of the defenses to your petition, that you are proceeding to select one railroad in one State in the whole United States to consider the subject of the issue of intrastate passes, when it is well known that every railroad in every State in the United States issues free intrastate passes, except in a few cases where the law now prohibits. Inasmuch as that issue has been raised in a peculiar way, and the defense has been interposed that Senator Lea is doing that for private purposes and not for the public good, that being a valid defense as has been heretofore held by the commission, we have the right to offer, and we are now offering, evidence bearing upon that question, not to obtain an order against Senator Lea but to properly defend the suit which he has brought against us.

Senator Lea. Mr. Jouett, of course, has admitted my entire contention. He has admitted that he has offered evidence at this time or is offering evidence at this time in regard to the character of the petitioner in the petition in regard to intrastate transportation. I submit we should deal with that question when the time comes for Mr. Jouett to present evidence upon that question. This is not the time, because the commissioner is presenting and counsel for the commission is presenting evidence in regard to an entirely different matter in which I am not a petitioner or a complainant.

Mr. Jouett. This comes in properly as an answer to the question by counsel, and that is why we insist it is competent. We are not going into that matter independently.

Mr. Folk. If you will have the question read you will find it to be entirely irrelevant.

Chairman Meyer. With reference to the last point, Mr. Jouett, that you will introduce evidence in defense of the suit brought against you by Senator Lea, is it not of some significance that Senator Lea has not yet introduced his testimony; that he has not yet given any testimony? It seems to me there is some point in the suggestion made by the complainant, Senator Lea, that the defendants here refuse to be interrogated with reference to political activities, but at the same time they assume at this time to inquire into his activities or alleged activities. Without passing upon the relevancy or irrelevancy of the answers that the witness has prepared, let me ask you as a practical matter whether you think it desirable to go into this at this time. As you know, we are trying to conclude with this witness to-day. A very important case is being argued before the Interstate Commerce Commission, a case which will last two days, and personally I very much desire to participate in that. In view of the fact that Senator Lea's attorneys are not here, and in view of these other things that have been mentioned, Mr. Jouette, as a practical matter wouldn't you prefer not to go into them at this time?

Mr. Jouett. Your honor, let me explain that we are not offering evidence upon that proposition in the sense that Senator Lea perhaps supposes. But counsel for the commission, who has put this witness upon the stand, has asked him a question which involves that matter, as the witness supposes it to be, and it would seem properly so. He certainly would have the right to make that answer. I will say frankly we are not prepared and do not expect to go into that question in full, but when the witness is put upon the stand by the other side we certainly ought to have the right to complete that testimony. I do not know what the statement is of Mr. Smith. I have never seen his memorandum. I don't know what he wants to make, but it does seem to me that in view of the question that Gov. Folk has asked him he ought to be permitted to respond to that question and allowed to state whatever he wishes to state with reference thereto. We will not go into the question of Senator Lea's activities as an original proposition at all, either by Mr. Smith or anybody else.

Chairman Meyer. You will remember that various questions were asked at Nashville bearing upon Senator Lea, and the suggestion was made and accepted by you that those questions had better be directed to Senator Lea, and in so far as those questions have not yet been directed to him, don't you think, as a matter of procedure here, it is better not to go into that at this time?

Mr. Jouett. Under ordinary conditions, possibly so. I suppose it will be the only time he will be upon the stand. Of course, he does not undertake to know personally.

Chairman Meyer. Until the court has ruled on the other questions.

Mr. Jouett. Until the court has ruled upon the other questions; yes, sir. I was just assuming what the court would do, if your honor please. It would seem, so far as this witness is concerned, whatever he may know of it, not knowing it personally, of course, he might complete his answer with reference to that matter so that he would not have to be introduced again.

Mr. Folk. He will have to be introduced again when the court rules on his refusal to answer.

Mr. Stone. We think he ought to be allowed to finish his answer, at least, and not stop in the middle of it.

Chairman Meyer. Gov. Folk, have you examined the statement to make reasonably certain that it will not necessitate a long chain of questions which will delay the witness and delay all of us?

Senator **Lea**. Your honor, I want to make just one other statement at this time. I want to call your attention to the fact that Col. Stone and Mr. Jouett have spoken about Mr. Smith coming a thousand miles here. That was their suggestion. They said they preferred to take this trip to Washington rather than to have Mr. Smith called for only a few minutes about 6 o'clock on Saturday afternoon and asked a few questions. They said they wanted to get this in a logical way. We are all anxious to have this presented to the commission in a logical way, but we want the question of political activity to be presented at a time when the commission's order to the witness to answer the question is reenforced by the decision of the court that he shall answer the question. I have no counsel here to cross-examine Mr. Smith in regard to any questions or with regard to anything he may say about me, and the proper time to cross-examine is at the time it occurs. This record is teeming with the disadvantage of clients acting also as counsel.

Mr. **Stone**. Did you ask Mr. Jouett or any counsel of the defendants in this case about the propriety or necessity of your counsel coming on here to Washington?

Senator **Lea**. Col. Stone, you were present and we discussed it with Mr. Jouett and yourself and Gov. Folk and Mr. Commissioner Meyer in an informal way. You were whispering to Mr. Jouett at the time.

Mr. **Jouett**. I never heard any suggestion about counsel.

Senator **Lea**. Not about counsel. I say about the procedure that was to take place here.

Mr. **Jouett**. The procedure that was suggested was as to two or three questions about an excluded matter. That procedure has not been followed.

Senator **Lea**. Isn't the reason for that because the witness has introduced certain matters which counsel for the commission has merely followed him on, some of which he tried to prevent him discussing? For instance, he tried to prevent him from reading his very entertaining comedy of "Comeritus," but he was powerless to do so. Those are the things that are delaying this. I am surprised, Mr. Jouett, that you would take the position that you want to conduct an examination like this when the other side, under conditions with which you are familiar, has not his counsel present.

Mr. **Stone**. Gov. Folk went into every phase of the case and explained the whole of it.

Mr. **Folk**. Suppose, Mr. Stenographer, you just turn to the question which was asked a few yards back.

Mr. **Smith**. May I be permitted to say that counsel have been spending a great deal of time discussing something they do not know anything about. They do not know what that is. My counsel have never seen that.

Chairman **Meyer**. May I also suggest, Mr. Smith, that in answers to various questions, while the answers were occasionally extremely comprehensive, ordinarily attorneys on one side or the other would object. I think, as a matter of courtesy to the president of the Louisville & Nashville Railroad Co., they did not object as often as they generally do, and in the absence of objection the presiding commissioner did not rule as often as he might in the ordinary rate proceedings.

Mr. Smith. I suggest it is not very long, your honor, and that I be permitted to answer, and then when you know what the conditions are you can decide to strike it out if you please.

Chairman Meyer. Mr. Reporter, just read the few questions and answers just preceding this colloquy which has taken place.

(The stenographer thereupon read as follows:)

> Mr. Folk. If all legislative bodies are a menace, you would abolish all legislative bodies, would you not?
>
> Mr. Smith. No; I don't think I would. What would you do? You have got to have some form of government.
>
> Mr. Folk. Would you substitute the power of the railroads, for instance, for the power of Congress or the power of State legislatures?
>
> Mr. Smith. No, sir.
>
> Mr. Folk. What did you mean by saying all legislative bodies are a menace?
>
> Mr. Smith. The menace arises from their power to enact bad laws or unjust laws or confiscatory legislation. As to the railways assuming the powers of government, it is absurd. There is a great deal said, and a great deal of legislation tending that way to say, that the owners or the management of railways must keep out of politics; the railroads must not participate in politics. What is politics?

Mr. Stone. We leave the whole matter to the commission as to whether he should be allowed to finish his answer or go on with something else.

Chairman Meyer. In view of the question that has just been read, and in view of the others that have been mentioned in this discussion, it seems to me wiser not to proceed with the full answer at this time, with the understanding that anything that is relevant to Senator Lea's complaint may be fully brought to the attention of the commission at the proper time.

Mr. Stone. Well, we do not want to be cut off from our right to cross-examine the witness and bring out what we choose at this hearing, when we get the floor with this witness.

Chairman Meyer. That, of course, will be considered at the proper time.

Mr. Smith. May I say, however, that that was preliminary to a proposition I proposed to make to drop this whole business and compromise.

Mr. Folk. To do what?

Mr. Smith. To drop these proceedings and compromise.

Mr. Folk. Compromise with whom?

Mr. Smith. If you will let me say, I will tell you.

Mr. Folk. Go ahead.

Mr. Smith. This that I said here was for this purpose: It was a proposition that I proposed to make, Commissioner Meyer——

Mr. Folk. Have you read that statement, Mr. Jouett?

Mr. Smith. I don't want my counsel to know anything about that, either. I am going to do it on my own responsibility.

Chairman Meyer. If the witness desires to make any statement that is relevant to this investigation, I do not see why he should not make it, but with the understanding that what has just been suggested by the presiding commissioner should not be introduced at this time.

Mr. Smith. That was preliminary to what I propose——

Chairman **Meyer.** I think, Mr. Smith, that the Senator Lea references will have to be omitted for the present.

Mr. **Smith.** Very well.

Chairman **Meyer.** Gov. Folk, what is your next question?

Mr. **Folk.** What you have said, Mr. Smith, with reference to the $249,000 transaction in 1912, involving the State of Alabama, applies to the $249,000 transaction in 1913 involving the State of Alabama.

Mr. **Smith.** Perfectly simple transactions.

Mr. **Folk.** You advanced $249,000 without any action by the board of directors. I will ask you if it is customary for you to use the funds of the Louisville & Nashville to that amount in any way that your judgment may dictate?

Mr. **Smith.** In a way, a very large part of the revenues of the company, derived by the company, is apportioned and distributed without direct action of the board of directors, in the due course of business.

Mr. **Folk.** Are investments made according to your will and order without regard to actions by the board of directors?

Mr. **Smith.** In this particular transaction, it was approved by the chairman of the board of directors of the Louisville & Nashville Railroad Co., who, under the by-laws, is directly in charge of the treasury and accounting department. The treasury and accounting departments are not subject to my direction and supervision, under the by-laws.

Mr. **Folk.** Should you desire to make a contribution for any purpose, political or otherwise, would you deem it your duty to bring the matter before the board of directors before taking action?

Mr. **Smith.** It would depend upon the character of it. Normally the board of directors should meet once a month, but they do not do it. However, they only consider such matters as are presented to them by the chairman.

Mr. **Folk.** You ordinarily would make such contributions yourself?

Mr. **Smith.** I do not make such contributions.

Mr. **Folk.** I am not speaking only of political, but any other kind of contributions.

Mr. **Jouett.** We object to this. These are not contributions. There is no proof of any contributions, Mr. Chairman. These are investments in interest-bearing warrants, and certainly there can be no question as to the entire legality of that proceeding.

Mr. **Folk.** We have gotten away from that now.

Mr. **Jouett.** But you keep on calling these contributions.

Mr. **Folk.** No; I am speaking of the use of the money by the Louisville & Nashville Railroad.

Mr. **Jouett.** There is no proof of a contribution. The word "contribution" is the word I object to.

Mr. **Folk.** I am asking, if he desired to make a contribution, whether it be to a church or to a party or any other——

Mr. **Jouett.** We object to it. What he will do is certainly immaterial.

Chairman **Meyer.** You should confine your question to the present and the past.

Mr. **Folk.** I think that question was confined to the past, not to the future.

Mr. Stone. I think it went to the future altogether.

Chairman Meyer. The witness may answer in reference to this question as to the past or present.

Mr. Jouett. We object to that. The general custom of this witness with reference to matters not involved in this hearing is certainly immaterial. As to some matters that, on the record, are involved in this hearing, we think it is beyond the jurisdiction of the commission, and, for that reason, we have objected to it; but certainly this does not open the door to go into an unlimited examination of every matter connected with the management of this company, a church contribution, as he says, or what not. I have no idea what the witness's answer will be, but it is wholly immaterial and irrelevant, and it is going far afield from the investigation.

Chairman Meyer. Repeat the question, Gov. Folk.

Mr. Folk. When in the past you have made a contribution of funds of the Louisville & Nashville Railroad for political or any other purposes, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself without action by the board?

Chairman Meyer. Gov. Folk, may I suggest, in view of the past declinations to answer, you eliminate "political" from your question.

Mr. Jouett. That is all right.

Mr. Folk. Eliminate the word "political."

Chairman Meyer. Then the witness may answer.

Mr. Jouett. We note the same objection, because it is immaterial. Read the question now.

The Reporter (reading):

> When in the past you have made a contribution of funds of the Louisville & Nashville Railroad for any purpose, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself without action by the board?

Chairman Meyer. Make it "for any purposes other than political." I suggest that, Gov. Folk, because the witness has been instructed to decline to answer questions of that kind, and they are to be certified to the court.

(The reporter then read the question, as follows:)

> When in the past you have made a contribution of the funds of the Louisville & Nashville Railroad for any purpose other than political, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?

Mr. Folk. I desire to have the word "political" in there, and they desire to object to it.

I would like to ask the question with the word "political" in, and, if he refuses to answer or is advised by counsel not to answer, then I will ask other questions.

Chairman Meyer. If you want that for the record, leave it in, and then——

Mr. Stone. We object to the question because, so far as the political feature of the question is concerned, it has all been passed on and was fully covered on yesterday. We want the commissioner to rule upon our objection to the question for that reason.

Chairman **Meyer**. Well, for the same reason that I have hitherto instructed the witness to answer, I shall have to instruct the witness to answer here.

Mr. **Jouett**. And we object to the ruling of the commissioner and give the witness the same advice.

Mr. **Folk**. Now, will you read that question with the word "political" eliminated?

The **Reporter** (reading):

> When in the past you have made a contribution of the funds of the Louisville & Nashville Railroad for any purpose, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself without action by the board?

Mr. **Jouett**. Why not put it "other than judicial," Governor, and get the thing straight?

Mr. **Folk**. Make this question "contribution or expenditure for political or other purposes." Read that question.

The **Reporter** (reading):

> When in the past you have made a contribution or expenditure of the funds of the Louisville & Nashville Railroad for political or other purposes, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had the authority to make it yourself, without action by the board?

Mr. **Folk**. That is a question you refuse to answer. Now, read the same question, making it "other than political."

The **Reporter** (reading):

> When in the past you have made a contribution or expenditure of the funds of the Louisville & Nashville Railroad other than for political purposes, have you conceived it to be your duty to obtain the sanction of the board of directors before making that contribution, or did you consider that you had authority to make it yourself, without action by the board?

Mr. **Smith**. We are not in the business of making contributions.

Mr. **Folk**. Or expenditures.

Mr. **Smith**. Oh, expenditures! Let me see the annual report. In the year ending June 30, 1915, expenditures to the extent of somewhere nearly a quarter of a million of dollars was made without any reference to the board of directors.

Mr. **Folk**. During the year——

Mr. **Smith**. Operating expenses. The procedure is something like this: An organization is made, and the expenses of operating the road are paid each month in regular course. The directors are only interested in the result. If any expenditures are to be made by me from capital account, additions and betterments, for building new roads, and things of that kind, they are submitted to the board by the chairman, who, as I have already stated, is directly responsible for the financial management of the company. While the board meets but once a month, he is in more or less close communication with him, and he may sometimes authorize the expenditures from capital account, if it seems desirable to act promptly, without first submitting it to the board; but he will, in due course, submit it to the board at the next meeting or at the first convenient opportunity. That is about the procedure.

Mr. **Folk**. Illustrate the nature of the transactions about which you consult the board of directors.

Mr. SMITH. Well, perhaps the latest one that comes to my mind is that the operating department has recommended the installation of what is known as automatic electrical block signals between Henderson, Ky., and a point near Nashville. At the date of the last board meeting I telegraphed asking for authority to make the expenditure. It was a pretty large amount—two or three hundred thousand dollars. While I happened to know that he received the telegram before the meeting, he did not submit it, leaving me to infer that he did not receive it until after the meeting of the board. Since that all the papers have been forwarded to him—supporting papers and recommendations, etc.—and, presumably, if he approves of it he will bring it up—he will submit it to the next meeting of the board, and if the board authorizes it we will go on with the expenditure. If the board does not authorize it we will not attempt to do it. That is the most recent illustration I can give.

Mr. FOLK. You contribute to public reunions, meetings, carnivals——

Mr. SMITH. We do what?

Mr. FOLK. You contribute to public reunions, meetings——

Mr. SMITH. I don't recall any.

Mr. FOLK. Carnivals?

Mr. SMITH. No; I don't recall any—recently, at least.

Mr. FOLK. Fairs?

Mr. SMITH. No. We did. I recall that we contributed to the creation of what was known as the Louisville Exposition in 1883, back that far; and I did that, as bearing on this, without getting authority from the board, and I was called to account for it sharply, and I bluffed the board by asserting that it was merely a passenger advertisement, and, under ordinary operating expenses, charged to advertising of passenger service. I do not think I have repeated that offense since 1883.

Mr. FOLK. What do you know about the American Antiboycott Association?

Mr. SMITH. We are a contributor to that and many other associations of that character. I think we contributed $500.

Mr. FOLK. Sir?

Mr. SMITH. I think we contributed $500 to the Antiboycott Association.

Mr. FOLK. What is the American Antiboycott Association?

Mr. SMITH. I do not know. You will have to get their prospectus.

Mr. FOLK. I show you here——

Mr. SMITH. I want to say, in a general way, that the Antiboycott Association is an association that is prosecuting and has made efforts to prosecute offenses against the laws, as they construe them, by labor unions engaged in illegal efforts to prevent laborers from working as they want to. A quite noted case of that kind is the Danbury hat case, which has been in the court for a good many years. That was prosecuted by that association. But I only know it in a general way. We are not very willing to make contributions to those institutions, and I do not now recall whether we contributed more than once, possibly twice, the sum of $500. I happen to know something about that personally, because the pleading was made to me and I authorized the expenditure.

Mr. Folk. I show you a letter signed by yourself as president of the Louisville & Nashville Railroad, dated April 6, 1914, addressed to H. F. Lee, secretary American Antiboycott Association.

Mr. Jouett. Let us see that, Governor, to see if it is relevant.

Mr. Folk. This letter was taken by order of the commission from the files of the Louisville & Nashville Railroad. Look at it and see if you can remember writing the original [handing letter to witness].

Mr. Smith. Yes; that is right, because that was a fact; and I think——

Mr. Folk. Let me read the letter, and then you can comment on it, if you wish to [reading]:

April 6, 1914.

Mr. H. F. Lee,
Secretary American Antiboycott Association,
27 William Street, New York, N. Y.

Dear Sir: Owing to absence, your favor of the 1st instant has not sooner had my attention.

The activities of the representatives of the Interstate Commerce Commission in scrutinizing and supervising the expenditures of the Louisville & Nashville Railroad Co. and their demands to be given access to all correspondence cause me to conclude that it is not politic to make a further contribution.

With appreciation of the work done by your association, I remain,

Yours, truly,

M. H. Smith, *President.*

Mr. Stone. What is the date of that?

Mr. Folk. April 6, 1914.

Why did you object to the representatives of the Interstate Commerce Commission having knowledge of your contributions to the American Antiboycott Association?

Mr. Smith. I do not think it is necessary to answer that. I think, after the exhibition that we had here yesterday, of copies of correspondence, there will be little or no correspondence. We will have to stop writing letters. We will have to do business by telephone.

Mr. Folk. By telephone.

Mr. Smith. Yes, sir; or we will have to add to each letter "Burn this."

Mr. Folk. Have you burned any of the correspondence of the Louisville & Nashville Railroad?

Mr. Smith. No; I have not.

Mr. Folk. Have you ordered it to be burned?

Mr. Smith. I don't know.

Mr. Folk. Sir?

Mr. Smith. Not recently.

Mr. Folk. How long since?

Mr. Smith. I don't know.

Mr. Folk. Well, within the last year?

Mr. Jouett. We think, if that is material, we have a right to burn every bit of the correspondence.

Mr. Smith. I do not see why we did not burn that one that we had here yesterday. That ought to have been burnt.

Mr. Folk. I want to find out whether you burned any recently.

Chairman Meyer. It seems to me that what the Interstate Commerce Commission is interested in is whether the president of the Louisville & Nashville Railroad has given directions to any of its officers or employees to destroy correspondence contrary to the regulations of the commisison.

Mr. JOUETT. There is no regulation as to destroying correspondence.

Mr. SMITH. No.

Mr. JOUETT. Our correspondence has been held by the Supreme Court to be not within section 20.

Chairman MEYER. I think your point is well taken.

Mr. FOLK. Right at that point, will you admit that correspondence——

Mr. JOUETT. We do not have to admit anything.

Mr. FOLK (continuing). Has been destroyed?

Mr. JOUETT. Why should we admit anything? I suppose there has been many a letter——

Mr. SMITH. We will save the labor of creating files of correspondence.

Mr. FOLK. Have you ordered any letters of the Louisville & Nashville Railroad destroyed recently?

Mr. SMITH. No. No; that is not my business.

Mr. FOLK. Now tell us about the Tennessee Railroad Association. Are you familiar with that organization and the operation of that association?

Mr. SMITH. The Tennessee Railroad Association?

Mr. JOUETT. Mr. Commissioner, I imagine that relates to advertising, or, at least, to some of the sections——

Mr. SMITH. No.

Mr. JOUETT. Does it not?

Mr. SMITH. It does not relate to advertising.

Mr. JOUETT. I am not familiar with it. Does it relate to anything involved in paragraph 12 of the Senate resolution?

Mr. SMITH. No; I should say not.

Mr. JOUETT. All right, then.

Mr. SMITH. It is an ordinary expenditure that all of the railroads of the country are making to a more or less extent. I think the principal roads in the East, the trunk lines, have an association which they call the Railway Executive Advisory Committee, but such associations have existed in which the Louisville & Nashville Railroad has participated, I know, since 1873. We formed such an organization in Macon, Ga., I think, in 1873.

Mr. FOLK. What is the purpose of it, Mr. Smith—the object of it?

Mr. SMITH. Why, to cooperate together for the maintenance of rates and the promotion of traffic, like the Southern Railway & Steamship Association.

Mr. FOLK. Did it have anything to do with legislation?

Mr. SMITH. No; not necessarily.

Mr. FOLK. Did it have anything to do with it?

Mr. SMITH. No; I do not think so. It was not the object of the association.

Mr. FOLK. As a matter of fact, did it take up the legislative policy of the different roads?

Mr. SMITH. I doubt it.

Mr. FOLK. Were any political expenditures made by the railroads through this Tennessee Railway Association?

Mr. JOUETT. We object to that, if it is a political expenditure, even through the association.

Mr. **Smith.** Oh, no; that had nothing to do with political expenditures. We employed a commissioner or manager and created an office, created files of correspondence and data, etc. There have been a great many of them. They have changed from time to time. I think we have several now. I think we have now what they call the Southeastern Mississippi Valley Freight Association, which is a sort of successor to the Southern Railway & Steamship Association or the Tennessee Railroad Association.

Mr. **Folk.** Did you know that the N., C. & St. L., of which you are a director, and which is controlled by the Louisville & Nashville Railroad, expended $559,522.17 through the Tennessee Railroad Association?

Mr. **Smith.** No; I do not.

Mr. **Folk.** Have you not been thinking of some other organization in your answers that you gave a while ago?

Mr. **Smith.** No.

Mr. **Folk.** And did you not know that the Louisville & Nashville Railroad reimbursed the N., C. & St. L. for those expenditures to the extent of $120,198.44.

Mr. **Smith.** No; I do not know that.

Mr. **Folk.** You have no recollection of that?

Mr. **Smith.** No; I have not.

Mr. **Jouett.** Governor, what is the date of that transaction that you refer to?

Mr. **Folk.** It runs up to 1902. If you wish, you can look at the ledger page of the N., C. & St. L. and see what the contributions were for.

Mr. **Jouett.** I do not know anything about it. He says he does not remember it.

Mr. **Stone.** How far back are we going in this investigation, anyway?

Mr. **Folk.** Just far enough to get the truth.

Mr. **Stone.** What is the purpose of it?

Mr. **Folk.** Light.

Mr. **Stone.** What is the light going to show?

Mr. **Folk.** Information.

I show you a copy of ledger page of the N., C. & St. L. Railway in relation to the Tennessee Railroad Association, and I will ask you to examine these items and possibly your memory may be refreshed as to the purpose of the Tennessee Railroad Association [handing book to witness].

(The witness examined the book and handed same to Mr. Jouett.)

Mr. **Folk.** Mr. Jouett, according to our idea, the expenditure there comes within the classification of political expenditures, and possibly you may desire to decline to answer.

Mr. **Jouett.** I think so myself. I shall object to it.

Mr. **Folk.** Then I can ask a series of questions, and you can object to them.

Mr. **Jouett.** Will you read the last question?

(The pending question was read by the reporter.)

Mr. **Jouett.** Let me make a statement right there. I have examined this statement presented to you by Gov. Folk. It seems to bear upon the matters, or some of the matters, embraced in paragraph 12 of the Senate resolution, which we conceive to be outside of the jurisdiction of the commission; so, for the reasons heretofore stated, I object to the witness answering that question and advise him not to answer it.

Chairman Meyer. The witness is instructed to answer.

Mr. Folk. Then you refuse to answer, Mr. Smith?

Mr. Smith. Upon advice of counsel I refuse to answer.

Mr. Folk. I will ask you whether or not you know, of your own knowledge, that these expenditures of the funds of the Louisville & Nashville Railroad Co., through the Tennessee Railroad Association, and of the Nashville, Chattanooga & St. Louis Railway, through the Tennessee Railroad Association, were made principally to State officials and legislators, judges, municipal officers, and lobbyists?

Mr. Jouett. I wish to say that while that statement goes back over 20 years ago, and we know nothing about it, for the reasons heretofore given we object to the question and advise the witness not to answer the question.

Chairman Meyer. The same ruling on the part of the commission.

Mr. Folk. You refuse to answer, Mr. Smith?

Mr. Smith. Yes; by advice of counsel I refuse to answer.

Mr. Folk. Can you tell us, of your own knowledge, whether these expenditures of the funds of the Louisville & Nashville Railroad Co. for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

Mr. Jouett. For the reasons heretofore given, we object to that question and advise the witness not to answer.

Chairman Meyer. The same ruling.

Mr. Smith. By advice of counsel I decline to answer.

Mr. Folk. Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

Mr. Jouett. We make the same objection and give the same advice.

Chairman Meyer. The same ruling.

Mr. Smith. By advice of counsel I decline to answer.

Mr. Folk. Since you have examined the items on that sheet that I showed you has your recollection been refreshed as to the purposes of the Tennessee Railroad Association?

Mr. Smith. Yes.

Mr. Folk. You thought it was a traffic association?

Mr. Smith. Yes.

Mr. Folk. So your earlier answers in reference to the Tennessee Railroad Association would not apply in the light of the information you now have as to the purposes of that association?

Mr. Smith. No.

Mr. Folk. I will ask you, Mr. Smith, was there not a Kentucky Railroad Association organized for purposes in the State of Kentucky the same as the Tennessee Railroad Association in the State of Tennessee?

Mr. Smith. When?

Mr. Folk. And did it not make similar expenditures?

Mr. Jouett. He asked when, Gov. Folk.

Mr. Folk. Up to 1902—from 1884 to 1902.

Mr. JOUETT. We object to the question, and give the witness the same advice.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. By advice of counsel, I decline to answer.

Mr. FOLK. You refuse to answer?

Mr. SMITH. Yes.

Mr. FOLK. Please use the word "refuse" instead of decline. That is the language of the statute.

Mr. STONE. It is the same thing.

Mr. FOLK. We would like to have the word of the statute, if we can.

Mr. STONE. There is no statutory word given in that connection.

Mr. FOLK. Yes; there is. It says, "If the witness refuses to answer"——

Mr. STONE. What is the difference between "refuse" and "decline"?

Mr. FOLK. When is the argument of a railroad attorney superfluous?

Was there not an Alabama Railroad Association organized for similar purposes, and did it not make similar expenditures in the State of Alabama?

Mr. JOUETT. You mean organized by different railroads, or by the Louisville & Nashville Railroad?

Mr. FOLK. Organized for similar purposes as the Tennessee Railroad Association was organized for.

Mr. JOUETT. Was organized by different railroads or——

Mr. FOLK. Different railroads; yes, sir.

Mr. SMITH. What is the date?

Mr. JOUETT. What is the date of it, Governor?

Mr. FOLK. From 1884 to 1902.

Mr. JOUETT. We object to that, and give the same advice.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. I refuse to answer, upon advice of counsel.

Mr. FOLK. Was there not a Georgia Railroad Association organized to operate in Georgia as the Tennessee Railroad Association operated in Tennessee?

Mr. STONE. We object to that.

Mr. JOUETT. If it is of the same nature——

Mr. SMITH. When?

Mr. JOUETT. What is the date of it?

Mr. SMITH. What is the date?

Mr. JOUETT. Do you know?

Mr. FOLK. From 1884 to 1902.

Mr. JOUETT. Upon the statement that it is of the same nature, we make the same objection and give the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer on the advice of counsel.

Mr. FOLK. Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Co., for $20,715.06, for special fees paid under direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

Mr. Jouett. Mr. Smith, I would like to direct your attention to this matter and ask you whether that voucher, if you know anything about it at all, relates to the matters involved in paragraph 12 of the Senate resolution. If you know anything about it, and say that it does relate to matters embraced in that paragraph, why, we object to it as being outside of the jurisdiction of the commission and advise you not to answer. You may state, first, whether you know anything about it, and if you know anything about it, whether it is involved in that paragraph of the Senate resolution.

Mr Smith. It is so involved.

Mr. Jouett. Then, is it involved solely with matters connected with that?

Mr. Smith. Yes.

Mr. Jouett. Then, I object to the question and advise the witness not to answer.

Mr. Folk. Political expenditure?

Chairman Meyer. The witness is instructed to answer.

Mr. Smith. I refuse to answer on the advice of counsel.

Mr. Folk. You stated that that was involved in section 12. Do you mean a special part of section 12?

Mr. Jouett. There are several parts of section 12; I think any part of section 12, but our objection goes to section 12. We have objected to the advertising introduced by Mr. Jones.

Mr. Folk. That was something more specific than that.

Mr. Stone. We object to all.

Mr. Jouett. We object to all of the evidence offered by Mr. Jones about advertising, which is only one of the objections to paragraph 12, and these other items of section 12; I do not remember now the details.

Mr. Stone. Legislative agents.

Mr. Jouett. Legislative agents.

Mr. Stone. And contributions.

Mr. Jouett. Contributions and various things.

Mr. Folk. Don't you know, Mr. Smith, that the law requires the carrier to keep its records in such a way as to give a full, true, and correct account of the moneys expended and the purposes of the expenditures?

Mr. Jouett. I do not think his knowing that makes any difference. The law fixes that. It may or may not be as the governor suggests, but I think that is an immaterial question. I do not know how much Mr. Smith may know about just exactly what may be done, but it is immaterial what he may know of the law.

Mr. Folk. I want to ask him if he directed this to be made in such a way as to conceal information as to its purpose?

Mr. Jouett. You can ask him any question of that sort that you may want, and we will pass upon that.

Mr. Folk. Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

Mr. Jouett. We object to it and give the witness the same advice as to answering it.

Chairman Meyer. The witness is instructed to answer.

Mr. Smith. I refuse to answer on advice of counsel.

Mr. Jouett. Governor, what is the date of that voucher, please?

Mr. FOLK. February, 1910.

You do not refuse to answer on the ground of self-incrimination, do you?

Mr. JOUETT. We object to that question. It is not material.

Mr. FOLK. No; the rule is that the witness must state his ground.

Mr. JOUETT. He has stated that ground.

Mr. FOLK. I have not heard him state it yet.

Mr. JOUETT. He has not stated any ground except——

Mr. FOLK. Right at this point, I would like you to state, Mr. Jouett, whether you advise the witness to refuse to answer, as attorney for the witness or as attorney for the Louisville & Nashville Railroad?

Mr. JOUETT. In this respect, as attorney for both, I advise him to decline to answer and claim any privilege he has about the matter.

Mr. FOLK. Do you advise him to refuse to answer on the ground of self-incrimination?

Mr. JOUETT. I do not think we have to answer here what the purpose of it is. The law fixes whether or not he is liable for any incrimination.

Mr. FOLK. At Nashville, you said the witness refused to answer on the ground he claimed the commission had no power to inquire into the particular matters——

Mr. JOUETT. That is the principal ground, but if he has any other privilege, I want him to rely upon every privilege.

Mr. FOLK. So, here you are relying on lack of power of the commission to investigate and self-incrimination?

Mr. JOUETT. Principally the former, Governor.

Mr. FOLK. I suppose the witness can not refuse to answer a question before the commission on the ground of self-incrimination?

Mr. JOUETT. I do not like to say anything that might appear to waive any privileges of the witness, or with reference to any future transaction. I do not know what it will be, but we simply stand originally upon our rights with reference to paragraph 12 of the Senate resolution. That is beyond the jurisdiction of the commission, but now, if there is anything else that you have hidden that I know nothing about, I reserve any other rights about it. I assume there is nothing in the world in there which will be in anywise incriminating.

Mr. FOLK. You base your objection mainly on the lack of power of the Interstate Commerce Commission?

Mr. JOUETT. Yes, sir.

Mr. FOLK. All right.

There appears among the files of the Louisville & Nashville Railroad, examined by the accountants of the Interstate Commerce Commission, voucher No. 1122, of date July, 1910, in favor of the National Bank of Commerce for $2,500. The only information with reference to this voucher appears to be for New York exchange, payable to order of Atlanta & West Point to cover L. & N. proportion of certain joint expenses. Can you give us more information with reference to that voucher and its purposes?

Mr. JOUETT. Mr. Commissioner, I know nothing about that voucher myself. If that voucher relates to matters embraced in paragraph 12 of the Senate resolution, if you know it, then I advise you not to answer it. Mr. Smith. I do not know whether you know anything about it.

Mr. SMITH. I do not know anything about it.

Mr. FOLK. Among the vouchers found by the accountants for the commission in the files of the Louisville & Nashville Railroad, appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce for $15,000, issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

Mr. JOUETT. I will ask you, first, Mr. Smith, if you know anything about that voucher; whether it related to matters embraced in paragraph 12 of the Senate resolution?

Mr. SMITH. Yes.

Mr. JOUETT. It related exclusively to those matters, did it?

Mr. SMITH. Yes.

Mr. JOUETT. Then I object to the question and advise the witness not to answer.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. By advice of counsel I refuse to answer.

Mr. JOUETT. What is the date of that?

Mr. FOLK. May 5, 1907.

Mr. HULL. That was May, 1907. We do not know the day of the month.

Mr. FOLK. Among other vouchers in the files of the Louisville & Nashville Railroad appears to be one, No. 327, of date December, 1906, for $2,000, in favor of the National Bank of Commerce. The only information found by the accounts of the commission was that this voucher was issued on account of and for certain expenditures authorized by the president. They were refused any further information. Will you please enlighten us as to the purposes of this voucher?

Mr. JOUETT. I will ask you, Mr. Smith, to state, if you know, anything about that voucher—whether or not it related to the matters embraced in paragraph 12.

Mr. SMITH. I do not know anything about it, or I do not remember anything about it now.

Mr. FOLK. Among the files of the Louisville & Nashville Railroad there appears to be voucher No. 27, dated October, 1909, in favor of J. F. Hanson, for $6,000 for services rendered. No other information could be obtained by the accountants as to the purposes of this voucher. Can you inform us what this voucher was for?

Mr. JOUETT. If you remember what that voucher was for, I will ask you, first, whether or not it related to matters embraced in paragraph 12 of the Senate resolution?

Mr. SMITH. I do not know anything about it.

Mr. FOLK. Hanson was president of the Central of Georgia. You do not recall anything about it?

Mr. SMITH. No.

Mr. FOLK. Among the files of the Louisville & Nashville Railroad there appears voucher No. 18, of date August, 1908, in favor of George W. Jones, for $3,000 for extra legal services and expenses in legal matters. No other information as to the purposes of this voucher could be obtained by the accountants of the commission.

Will you please enlighten us as to the purposes of this voucher, if you can?

Mr. Jouett. If you recall anything about that voucher, I will ask you whether or not it related to matters embraced in paragraph 12 of the Senate resolution.

Mr. Smith. I do not know anything about it.

Mr. Folk. Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad there appear vouchers for $13,068.80 paid to George W. Jones——

Mr. Jouett. Give the numbers and dates, will you, Governor?

Mr. Folk. These vouchers bear notations "Expense account of adjourned session of Alabama Legislature." No other information could be obtained by the accountants for the commission.

Mr. Stone. Wait a minute until he fixes the date.

Mr. Folk. He is getting the date.

Mr. Jouett. While you are getting the date, I will just ask, Mr. Smith, whether you recall those vouchers; and if you do, state whether or not they relate to matters embraced in paragraph 12.

Mr. Smith. I do not know anything about them.

Chairman Meyer. Which officer of the company would know about those items, Mr. Smith?

Mr. Folk. You refuse to answer?

Mr. Jouett. Wait a moment.

Mr. Smith. I can only surmise.

Mr. Stone. We object, if the witness does not know. We do not think it is worth while to cumber the record with surmises.

Chairman Meyer. Then, which officer of the company ought to know about them?

Mr. Smith. Do you want me to give my opinion or my surmise?

Mr. Jouett. As the witness has said that he does not know anything about those vouchers, as neither dates nor numbers nor any identifying information is shown, I do not know how he could very well know who would have to pass upon that particular voucher. For that reason we would object, but, of course, we do not instruct him not to answer if he wants to give one. Of course, it will be only an opinion.

Chairman Meyer. Well, my thought was that in the organization of the Louisville & Nashville Railroad Co. there must be some one charged with the responsibility for knowledge of these things, and the commission would like to know who is charged with the responsibility for knowledge regarding these things.

Mr. Smith. That does not show what the voucher was for. The heads of the various departments approve the various vouchers of those departments, and there is no indication there from what department that would be.

Mr. Folk. Do you know George W. Jones?

Mr. Smith. Oh, yes.

Mr. Folk. He is your district attorney in Alabama, is he not?

Mr. Smith. Yes.

Mr. Folk. What official of the Louisville & Nashville Railroad has charge of the expenditures made to Mr. Jones?

Mr. Smith. Referring back to the voucher, the commissioner asked who was in charge. It occurs to me from the wording of the voucher that it would be very difficult for anybody to say that that expense occurred during the session of the legislature.

Mr. **Folk** (reading):

Expense account of adjourned session of Alabama Legislature.

Mr. **Smith**. It would, I think, be very difficult to even Mr. Jones, who seems from the wording of the voucher as read by counsel to have had charge of those expenses. It is not likely that he has the items going to make up that amount. I do not know of anybody else that would know anything about it, except possibly those that are associated with him. In other words, it would be impossible to give the items.

Mr. **Stone**. What is the date of that?

Mr. **Smith**. That is merely my opinion.

Mr. **Folk**. January, 1907.

Mr. **Jouett**. How many vouchers were there, Governor?

Mr. **Stone**. That is a mistake, if it is January, 1907. That was the regular sessison of the Alabama Legislature.

Mr. **Folk**. Folio 454. It is already in the record. It was introduced at the Nashville hearing as an exhibit, and the stenographer has not yet returned it.

Mr. **Jouett**. What I am trying to get at is whether that was one voucher or a number of vouchers.

Mr. **Folk**. A number of vouchers.

Mr. **Jouett**. About how many?

Mr. **Folk**. About six.

Mr. **Stone**. Have you the number of those vouchers?

Mr. **Folk**. They are in the record already as an exhibit to the testimony, page 792. That testimony was taken at Nashville.

Mr. **Stone**. There is evidently a mistake about this date. The regular session of the Alabama Legislature was begun in January, 1907, and lasted until sometime in the spring. Then there was an adjourned session in 1907, in August, and still another session in November, 1907.

Mr. **Folk**. According to the records of the Louisville & Nashville Railroad Co., Mr. Smith, the Louisville & Nashville Railroad Co. collected from other carriers on account of the $13,000 expended by and through Mr. Jones, that I have mentioned, the following amounts: N., C. & St. L., $360.29; Atlanta & West Point Railway, $381.81; St. Louis & San Francisco, $565.72; Seaboard Air Line, $158.14; Mobile & Ohio Railroad, $141.26; Central of Georgia, $237.90; Atlantic Coast Line Railroad, $73.83; Western Railway of Alabama, $111.17; Alabama Great Southern, $1,318.39; Southern Railway, $3,138.28; from sources not stated, $1,382.07; total, $7,867.86, collected from other carriers by the Louisville & Nashville on account of these expenditures, through Mr. Jones. Have you any recollection of these items?

Mr. **Jouett**. Now, we object to any further investigation in regard to the items on that voucher. I instruct the witness not to answer.

Chairman **Meyer**. The witness is instructed to answer.

Mr. **Smith**. On advice of counsel, I refuse to answer.

Mr. **Jouett**. Governor, you said, "that voucher." You meant those vouchers.

Mr. **Folk**. "Those vouchers." Make that "those vouchers."

Mr. Smith, do you know anything about the Alabama State Land Congress?

Mr. JOUETT. There was some testimony about the Alabama State Land Congress introduced at Nashville. I am not very clear just what was shown about it, but I want to say to Mr. Smith that if that matter relates to the subjects embraced in paragraph 12 of the senate resolution and relates exclusively to those, then I would like to object to that question or any answer with reference to it.

Mr. SMITH. That does not.

Mr. JOUETT. Very well. Go ahead, then.

Mr. SMITH. I know very little——

Mr. FOLK. What was the Alabama State Land Congress organized for?

Mr. SMITH. I don't know.

Mr. FOLK. What was it used for?

Mr. SMITH. If you want my opinion, it was supposed to give certain parties occupation and a salary.

Mr. FOLK. What people do you think it was to give occupation and a salary?

Mr. JOUETT. I do not think that is essential.

Mr. FOLK. Was it some one in connection with the railroads?

Mr. SMITH. No. I think the main——

Mr. FOLK. Well, you contributed $1,200?

Mr. SMITH. Just a moment. I think the main force that created that organization was a man who has made his livelihood for many years in promoting such enterprises. I know that he at one time was the editor of a paper, and I suppose you would call him a booster for the city of Chattanooga. I have known of him in a general way in similar enterprises at various other places—Huntsville, Ala.; Sheffield, Ala.; and Mobile, Ala., as well as Johnstown, Pa.; and last I think, Birmingham, Ala. That was the Alabama Land Congress. While I have very slight acquaintance with him, he came to me in Louisville. He claimed that he was trying to do something for the State of Alabama, and I quite reluctantly authorized, I think, the third vice president, the head of the traffic department, to put him on the pay roll for a few months. I do not know for how much. I think he organized this, and it went on until some one else wanted his job and they kicked him out.

Mr. FOLK. You authorized the third vice president to take the matter up?

Mr. SMITH. As an advertising matter; yes, sir. I think it was charged to advertising.

Mr. FOLK. I show you a letter from the third vice president, Mr. Smith, under date of March 1, 1913, addressed to Mr. G. A. Park.

Mr. SMITH. Yes.

Mr. FOLK. General immigration and industrial agent. This letter has already been read in the record. The first sentence is—

> There has been organized the Alabama State Land Congress for the purpose of advertising the agriculture resources of Alabama. * * *
>
> At an interview this morning President N. F. Thompson—had with our president and me, Mr. Smith—

that is, yourself—

> agreed that the L. & N. Railroad should do its share, making a subscription not exceeding $1,200 during the next three months.

Mr. Smith. That is correct.

Mr. Folk. Now, the Alabama Land Congress was an organization ostensibly for the purpose of advertising the agricultural resources of Alabama. Now we come to what the Alabama State Land Congress was actually used for——

Mr. Jouett. We object to counsel interlarding his questions by statements of that sort, if your honor please. That may or may not be a correct conclusion from the evidence, but the questions ought to be put without the governor's foreword.

Mr. Folk. I will change that if it is objectionable to the sensitive nature of my friend.

Mr. Jouett. I just do not like the way you put it.

Mr. Folk. Can you tell us what the Alabama Land Congress was actually used for?

Mr. Smith. Why, for the purpose for which it states it was organized.

Mr. Folk. Was it not actually used to fight Mr. Comer?

Mr. Smith. No.

Mr. Folk. And his theories of railroad regulation?

Mr. Smith. No; not as I know.

Mr. Folk. I show you a letter of date April 23, 1913, addressed to Addison R. Smith, third vice president of the Louisville & Nashville Railroad, signed by N. F. Thompson. It has already been put in the record, and it reads:

> I am greatly encouraged at the marked change that is being exhibited all over the State in favor of "business" and "development," and while Mr. Comer has been actively canvassing in those places which he has considered his strongholds, he has not yet aroused such interest as to lead him to formally declare himself a candidate, and if he should do so I believe he will be gloriously "licked."

That is signed by the president of the Alabama State Land Congress.

Mr. Jouett. What is your question, now?

Mr. Smith. He probably wanted a contribution.

Mr. Folk. Wanted another contribution. Do you think he thought he could get a contribution more easily——

Mr. Smith. I don't know what he thought.

Mr. Folk (continuing). By showing you how he was fighting Comer than by merely showing that the Alabama State Land Congress encouraged the agricultural resources of Alabama? Do you know anything about this letter that I have just read you?

Mr. Smith. No; I have never seen it.

Mr. Folk. Another letter signed by N. F. Thompson, president of the Alabama State Land Congress, dated Birmingham, Ala., May 22, 1913, addressed to Addison R. Smith, vice president of the Louisville & Nashville Railroad. It is already in the record, and it reads:

> Now, to announce that every railroad, i. e., the five large systems (L. & N., the Southern, Seaboard, I. C., and Frisco), were coming to Alabama to consult with the landowners, and go over with them plans for a general move for white farmers here, would have the most far-reaching benefit in every way, and could not be turned to any political disadvantage whatever. It would be without question the best method of defeating Comer, but I will see that it is kept clear of politics, and the railroads will be infinitely the gainers.
>
> It will be worth all you can do to help bring this about, so I request that you write a letter to the presidents of the roads named and plainly state to them

what is desired, and I will do the rest. Just sit steady in the boat, and you will [word evidently omitted] one B. B. Comer licked to a frazzle, and all this railroad agitation would come to a speedy end in Alabama.

Sincerely, yours,

N. F. Thompson, *President.*

Do you remember that letter?

Mr. Smith. No; I do not remember it.

Mr. Folk. Was not that letter referred to you by Mr. Addison R. Smith, the vice president?

Mr. Smith. No.

Mr. Folk. And on that letter, did you not write to the presidents of the railroads mentioned in this letter, the following letter:

May 29, 1913.

Mr. W. W. Finley,
President Sou. Ry., A. G. S. R. R., M. & O. R. R., Washington, D. C.
Mr. W. J. Harahan,
President S. A. L. Ry., Norfolk, Va.
Mr. C. H. Markham,
President I. C. R. R., C. of G. Ry., Chicago, Ill.
Mr. B. L. Winchell,
President Frisco Lines, St. Louis, Mo.
Mr. C. A. Wickersham,
President A. & W. P. R. R., W. Ry. of Ala., Atlanta, Ga.
Mr. T. M. Emerson,
President A. C. L. R. R., Wilmington, N. C.

Gentlemen: * * * I have felt that the movement, aside from the good resulting from the direct accomplishment of its purposes, would, due to the cementing of the interests and the efforts of all classes of citizens, cause a more friendly feeling toward corporations in general, and the railroads in particular, and in addition might be the means of diverting the minds of farmers and others from demagogic politics, although it has been the effort of the officers of the congress to keep their organization clear of politics. Hence, I have been aiding the president, Col. N. F. Thompson, in various ways in furthering the objects of the congress. * * *

I hope that you can find it proper to say to President Thompson that you will arrange to attend the next congress.

Yours, very truly,

M. H. Smith, *President*

Do you recall that letter, Mr. Smith?

Mr. Smith. No; I do not. I do not think I wrote that letter. I probably signed it. It sounds as though Thompson wrote it.

Mr. Folk. Are you in the habit of signing things without agreeing to what you sign?

Mr. Smith. I recall he was trying to, and did have quite a widely attended meeting, and I recall that, in spite of my refusal, he advertised that I was going to make a speech, which I did not do, and I did not attend the congress. Making speeches is not in my line, except to the Interstate Commerce Commission. That organization was a perfectly innocent thing. It did not do any harm, and it may have done some good; but the poor fellow, I think, at that meeting was kicked out. I forget the organization that was to take his place. I do not know what became of it.

Mr. Folk. What was meant by this expression, "although it has been the effort of the officers of the congress to keep their organization clear of politics," when the main purpose seemed to be to fight Comer?

Mr. Jouett. We object to counsel saying that is the main purpose.

Mr. Folk. According to these letters.

Mr. JOUETT. But the letters do not show that. It is not shown to have been the object of that corporation.

Mr. SMITH. This is all time wasted about that. There is nothing in that at all.

Mr. FOLK. How much did you contribute to this organization altogether, do you know?

Mr. SMITH. I do not know. It seems I authorized a contribution or payment of $1,200 there, which, I think, was to be charged to advertising or something of that kind.

Mr. FOLK. Now, Mr. A. R. Smith, your third vice president, attached to your letter a copy of the letter that I have just read, as follows, dated August 2, 1913, to Mr. Pusey:

> The movement represented by the Alabama State Land Congress will result in inestimable benefit to the Alabama carriers; it has other value at this time, which it is unnecessary to mention; suffice it to say that I believe the executive officers (presidents or vice presidents) of the respective Alabama lines have information on the subject.

Do you recall that——

Mr. SMITH. No.

Mr. FOLK (continuing). Statement by Mr. A. R. Smith?

Mr. SMITH. No; I do not know anything about it.

Mr. FOLK. Letter to you of date of November 7, 1913, signed by N. F. Thompson, secretary and general manager [reading]:

> Mr. M. H. SMITH,
> *President L. & N. R. R., Louisville, Ky.*
>
> MY DEAR SIR: * * * I shall make it more clear that Alabama can not hope to advance as it should until the people stop the agitation against railroads by the politicians.

Do you recall receiving that letter?

Mr. SMITH. No; I do not.

Mr. FOLK. In connection with the Alabama State Land Congress?

Mr. SMITH. I do not know.

Mr. FOLK. Can you tell us, Mr. Smith, whether, as a matter of fact, this Alabama State Land Congress, formed ostensibly for the purpose of advertising the agricultural resources of Alabama, was in reality used to create sentiment in favor of railroads in general, and the Louisville & Nashville Railroad in particular?

Mr. SMITH. No; that was not the object. The Louisville & Nashville Railroad had nothing to do with the organization of it and contributed to it very reluctantly; at least, so far as I had anything to do with it.

Mr. FOLK. You would say that the purpose of the Alabama Land Congress was not to create sentiment in favor of railroads?

Mr. SMITH. I do not say that. I said I do not know anything about it; what the object of it was, because we were not the organizers of it.

Mr. FOLK. But you did contribute to it?

Mr. SMITH. Yes.

Mr. FOLK. And you were anxious to defeat Comer?

Mr. SMITH. It had nothing to do with that; not in any way connected with politicians.

Mr. FOLK. But it was right at the time of your Comeritis pamphlets and letters, was it not?

Mr. SMITH. Possibly.

Mr. **Folk**. Did the Alabama State Land Congress distribute any of your cartoons of Comer?

Mr. **Smith**. We did not suspend operations during that Comer campaign.

Mr. **Folk**. Well, this was at the same time that you were issuing advertisements all over the State of Alabama against Comer?

Mr. **Smith**. No, sir; I should say not.

Mr. **Jouett**. We object to that on the same ground as heretofore indicated.

Senator **Lea**. Now, in the absence of my counsel, would you mind stating what the ground of your objection is to that question?

Mr. **Jouett**. Yes, sir; we consider it is wholly outside of the province of the Interstate Commerce Commission—which was created for the sole purpose of regulating commerce between the States—for the Interstate Commerce Commission to make an examination for the purpose of ascertaining how much was spent in a political campaign and how much was spent for advertising in the State. It is wholly outside of the jurisdiction of the commission.

Senator **Lea**. You confine it just to those two things?

Mr. **Jouett**. Everything in paragraph 12.

Senator **Lea**. Do you mean that the commission has no power to go into the political activities of the railroads?

Mr. **Jouett**. I certainly do.

Senator **Lea**. But you insist, as I understand it, that the commission has power to go into the political activities of individuals who are not carriers?

Mr. **Jouett**. You fail to draw the distinction.

Senator **Lea**. Just answer that question.

Mr. **Jouett**. I certainly do in this, where the individual has seen fit to come before the commission and file a formal complaint against a railroad company. We have the right, as a matter of defense, to show that that complaint is not for any public good, but is for the purpose of advancing his political fortunes.

Senator **Lea**. In other words, your logical statement of it——

Mr. **Jouett**. It is a matter of defense and not a matter of complaint.

Senator **Lea** (continuing). Is that the Interstate Commerce Commission has no jurisdiction over political activities of carriers which are subject to its jurisdiction, but has absolute jurisdiction over the political activities of individuals who are not subject to its jurisdiction.

Mr. **Jouett**. No; they have no jurisdiction.

Senator **Lea**. That is what it amounts to.

Mr. **Jouett**. No; you are wholly mistaken. We do not claim that this commission has any jurisdiction over your political activities, whereby they could make any order with reference to your political activities; but when you come before the commission with a formal complaint, which, as we think, was based solely upon political and private grounds and had nothing to do with the public good, we have, under authority of decisions of the commission, a right to show that fact in defense. You have brought it into court. We make this as a matter of defense. We are making no complaint against you. We could not have any inquiry instigated as to your political activities, but we can consider such as matter of defense, when we think that that furnished the full basis of your complaint against the carriers.

Senator **Lea**. Even while in the same breath denying the power of the commission to go into the political activities of the carrier.

Mr. **Jouett**. Certainly.

Senator **Lea**. I do not think you can be serious in that.

Mr. **Jouett**. I certainly am.

Senator **Lea**. I think it must be another bit of humor being injected into it.

Chairman **Meyer**. I imagine the Supreme Court will have to settle that question.

Mr. **Jouett**. Yes, sir; the Supreme Court will have to settle it.

Chairman **Meyer**. We will adjourn here until 2.15.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2.15 o'clock p. m.)

AFTER RECESS.

The hearing was resumed at 2.15 o'clock p. m.

Mr. **Milton H. Smith**, the witness on the stand at the time of taking the noon recess, resumed the stand, and having been previously sworn, testified further as follows:

Direct examination—Continued:

Mr. **Folk**. Mr. Smith, did the Louisville & Nashville Railroad Co., through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas agency in a campaign against rate reductions as advocated by former Gov. Comer, of that State?

Mr. **Jouett**. We object to that question, your honor, and advise the witness not to answer, upon the grounds heretofore stated, that being embraced in paragraph 12 of the Senate resolution.

Chairman **Meyer**. The same instructions on the part of the commission.

Mr. **Folk**. You refuse to answer that question?

Mr. **Smith**. I refuse to answer that question on advice of counsel.

Mr. **Folk**. Have you personal knowledge of any funds of the Louisville & Nashville Railroad Co. expended in Alabama through the Johnson-Dallas agency in a campaign against rate reductions?

Mr. **Jouett**. I object to that question, and advise the witness not to answer.

Chairman **Meyer**. The same instructions on the part of the commission.

Mr. **Smith**. On the advice of counsel I refuse to answer.

Mr. **Folk**. Did you not, Mr. Smith, write a number of advertisements yourself in that campaign in Alabama, and have them published under your own name through the Johnson-Dallas agency?

Mr. **Jouett**. I make the same objection and give the same advice to the witness.

Chairman **Meyer**. And the same instructions to answer.

Mr. **Smith**. I refuse to answer the question on the advice of counsel.

Mr. **Folk**. Did you see the advertisements in answer to ex-Gov. Comer, signed by Milton H. Smith, introduced in evidence at the hearing at Nashville, and if so, can you tell us what you know about those advertisements?

Mr. **Jouett.** I make the same objection and give the same advice to the witness.

Chairman **Meyer.** The same instructions to answer.

Mr. **Smith.** I refuse to answer on the advice of counsel.

Mr. **Folk.** I show you a letter addressed to Mr. George W. Jones, dated September 12, 1912, signed by yourself, and ask you if you, after examining this copy, can state whether or not you wrote the original?

Mr. **Jouett.** We object to the question and give the same advice to the witness.

Chairman **Meyer.** The same instructions to answer.

Mr. **Smith.** I refuse to answer on the advice of counsel.

Mr. **Folk.** This letter, Mr. Smith, is addressed:

> George W. Jones, Esq.:
>
> Herewith certain memoranda which may be used to advantage.
>
> The campaign will be a long one, and I advise that instead of making a comprehensive answer to Comer's emanations, that one point be covered at a time, made as brief as possible, and disseminated one at a time. We did quite effectively in 1884–85. Puncture one error at a time, and possibly create an interest in future punctures. I do not give specific instructions, but leave the conclusion as to what is best to you and your associates. These memoranda, if used, need not in any way interfere with anything that Mr. Bowie or others may do.
>
> It may be best to publish without a responsible signature. If a pen name is desired, I suggest "Irulus"; if deemed best, publish over my signature. In any event I will be responsible.
>
> Yours, truly,
>
> M. H. Smith, *President.*

Do you recall writing that letter?

Mr. **Jouett.** We object to the question and give the same advice to the witness.

Chairman **Meyer.** The same instructions to answer.

Mr. **Folk.** You refuse to answer?

Mr. **Smith.** I refuse to answer on advice of counsel.

Mr. **Folk.** Do you know Mr. Sidney J. Bowie?

Mr. **Smith.** Yes.

Mr. **Folk.** He lives in Alabama?

Mr. **Smith.** Yes.

Mr. **Folk.** Do you know whether or not he wrote a large number of articles in answer to ex-Gov. Comer in reference to rate reductions during the year 1912?

Mr. **Jouett.** I make the same objection and give the same advice to the witness.

Chairman **Meyer.** The same instructions to answer.

Mr. **Smith.** I refuse to answer on advice of counsel.

Mr. **Folk.** What was the relation of Mr. Sidney J. Bowie to the Louisville & Nashville Railroad Co. in the year 1912?

Mr. **Jouett.** I have no objection to that. Go ahead.

Mr. **Smith.** Sir?

Mr. **Jouett.** Go ahead and answer. I have no objection to that.

Mr. **Smith.** I don't know. I think he was an attorney employed by the legal department in one or two important legal contests. Whether it was in 1912 I do not know.

Mr. **Folk.** Employed in one or two cases, but whether it was in 1912 or not, you do not know?

Mr. **Smith.** Whether it was in 1912 or not, I do not know.

Mr. FOLK. Did you know he was paid by the Louisville & Nashville Railroad Co. in those one or two cases the sum of $80,000?

Mr. SMITH. I don't know.

Mr. FOLK. Have you any information on that subject?

Mr. SMITH. No, sir; no specific information.

Mr. FOLK. Who would know about that?

Mr. SMITH. Col. Stone, general counsel.

Mr. FOLK. Do you know whether the amount paid to Mr. Bowie—whether $80,000 or any other sum—covered compensation for writing those articles?

Mr. JOUETT. We object to that, and give the same advice to the witness.

Chairman MEYER. The same instructions to answer.

Mr. SMITH. I refuse to answer on the advice of counsel.

Mr. STONE. You have Mr. Bowie's statement, haven't you, Governor? You can introduce that.

Mr. FOLK. I have a letter from him.

Mr. STONE. That states the facts within his knowledge, doesn't it?

Mr. FOLK. We shall have him on the stand later.

Mr. STONE. We shall not object to his statement, if you want to introduce it right now.

Mr. FOLK. I would rather examine him.

Mr. STONE. Very well.

Mr. FOLK. Mr. Smith, according to the records of the Louisville & Nashville Railroad Co., the sum of $295,000 was expended by that road between the years 1906 and 1914, through Mr. J. B. Harlan, special agent of the Louisville & Nashville Railroad Co., at Louisville, and others. The accountants of the commission were refused information as to these expenditures.

Can you tell us what, if anything, you know as to how this $295,000 was expended?

Mr. JOUETT. I think the chairman will recall that this matter came up Saturday afternoon in Nashville, and we agreed to present to the chairman all the vouchers relating to that matter. It does relate to matters more or less of a confidential nature, and necessarily so. The understanding we had was that the commission were to examine and were to satisfy themselves about it without any undue publication. I think that agreement ought to be carried out. I do not mean that Gov. Folk is intending to break the agreement, but I think this question ought not to be insisted upon under those circumstances. If it would be satisfactory to the commission and to Gov. Folk, we can let the witness state, which is true, that no part of that money was spent for any of the matters involved in any of the 13 paragraphs of the Senate resolution. None of it even is embraced in section 12, or paragraph 12, I should say, rather. It involves certain confidential matters in relation to the management of one department of the Louisville & Nashville Railroad, a department similar to the kind that prevails in every railroad, but the details of which it would be unnecessarily injurious for them to be exposed. They do not bear in the slightest degree upon this matter. We had an arrangement whereby your honor was to examine those vouchers when we furnished them to you, which we will do at any time.

Mr. Folk. I have asked the witness as to his knowledge concerning these expenditures. I have not yet been advised whether he has any knowledge on the subject.

Mr. Jouett. He has general knowledge. He doesn't know a single item or a single sum of money that may have been involved in any of those expenditures from 1906 to 1914. He knows, in a general way, the nature of Mr. Harlan's employment and the purposes for which that money was expended. He does not know anything in detail, but we have offered to give you, and will give you, every voucher and receipt during those years, showing the exact expenditure. I think under the circumstances that is sufficient. There ought to be some limit to the range of this examination. It certainly ought not to go into matters that in no wise relate to the subject under investigation, and whose sole purpose would be, possibly, to injure the railroad.

Chairman Meyer. Mr. Jouett, you will remember when this question was raised in Nashville you made a statement which, in substance, I think you have repeated now, to the effect that the company was perfectly willing to have all these accounts, vouchers, and statements examined by the chief counsel and by the presiding commissioner at any time, but you objected to having these matters gone into upon the public record. I think I stated then, and the record will show exactly what I did say; but the substance of what I stated, I believe, was something like this, that in view of the state or progress of the proceedings at that time it was not necessary for me to decide the question that you raised; that we would proceed with other matters, and I would submit that question to my colleagues in conference, at the same time suggesting possibly that I did not wish, in advance of such conference, to examine any of such statements or vouchers. I submitted that question to the commission in conference, stating to the members of the commission, as nearly as I could remember it, what you had said in open session and some explanations that you had made for the record, just as the chief counsel and myself discussed that for the record to some extent.

My instructions from the commission are not to assume responsibility for investigating that or any other item off the record. So the ruling of the commission in conference is that none of these items can properly be examined by a member or members of the commission in a private way.

Mr. Jouett. The purpose of that examination, Mr. Commissioner, was not that it might be taken into consideration in connection with this report, but to enable you to see whether that evidence was competent, and whether you would then require it to be introduced. That was the purpose. Of course, if the commission holds that that evidence is competent and relevant to the inquiry that is now in progress, then we would either have to answer the questions or decline to answer them because of the reasons similar to those which have heretofore been discussed. But as they do not bear in anywise upon the matters involved in the Senate resolution, it seemed a great wrong, in a way, for the carrier to be forced to make disclosures involving their secret-service department. The carriers are just like the Interstate Commerce Commission, or any other department of the Government for that matter, and they necessarily have a secret-service branch in which there are matters of a confidential matter, but which, nevertheless, are matters of entire propriety. The fact that they are kept secret is no evidence that they are wrong, any more than with reference to any other similar body. Therefore, we do not believe the commission, simply because it has the power to go into various matters in an investigation, should unnecessarily expose things of that sort which do not pertain in the slightest degree to this examination.

Chairman **Meyer**. I think I suggested in Nashville, when this matter was up for discussion upon the record, that in my view the commission was interested in the manner in which a carrier expended its funds. I am sure I expressed the view of the commission. Now, you raise the question of whether or not an examination of this particular item is relevant to the present inquiry.

Mr. **Jouett**. Yes.

Chairman **Meyer**. That question has not been submitted to the commission.

Mr. **Stone**. I do not understand Gov. Folk even to avow that he expects to end it with this investigation.

Mr. **Folk**. I don't know what answer Mr. Smith will make.

Mr. **Stone**. We can bring that much of it out.

Mr. **Jouett**. It has no bearing upon any feature of this investigation, and does not relate in the slightest to any of the matters embraced in paragraph 12 of the Senate resolution, or any of the others.

Senator **Lea**. I would like to make this suggestion, that perhaps this applies to the question of political activities of individuals, and upon that theory it would be competent under your construction of the act to regulate commerce.

Mr. **Jouett**. No; it is not.

Chairman **Meyer**. Which, however, had not been approved by the commission.

Mr. **Jouett**. Your honor can see how a very great injustice might be worked through the forms of law. I know there is no disposition on the part of counsel for the commission, nor of the commission, to do that. If it is necessary to go a little further into the matter of proof, I might ask Mr. Smith a question or two to show that it has no connection.

Mr. **Folk**. But you are asking him for his conclusion. Let him answer the question which was asked, and state what this fund of $295,000 was for. If it was for labor let him say so.

Mr. **Jouett**. So far as he knows, but I will say to you that he does not know anything about the details. He knows the nature of Mr. Harlan's service.

Mr. **Folk**. Then he can simply state that, if that is all he knows.

Mr. **Jouett**. That would be all he knows, but I do not think, in the light of the preliminary statement that you have made as to the amount of money which was expended, that that would be proper. Mr. Harlan can be asked about those matters, and the question can then come up for the commission to determine whether it is relevant, and that is when I wish to present all the vouchers and the other matters so that we can determine whether it is relevant or not. If it is not, then the injustice ought not to be done.

Chairman **Myer**. What were the instructions, if any, you gave to witness Harlan at Nashville? You did not instruct him not to answer with respect to those items.

Mr. **Stone.** We were not required to go that far. It was just passed over.

Mr. **Jouett.** We told your honor privately what it was, and stated we would like to present that question by giving all the vouchers to you when the time came.

Chairman **Meyer.** I remember the matter was left open in that way, you volunteering that the chief counsel and myself should have the opportunity of examining them, or that any member of the commission should have the opportunity of examination.

Mr. **Jouett.** We should be glad to do that, but we object to this publication of the matter unnecessarily.

Chairman **Meyer.** The question raised at this time is with respect to the relevancy of the examination of this item.

Mr. **Jouett.** Yes. I understood that was raised before, but perhaps I did not get it clear in my mind.

Mr. **Folk.** What was that?

Mr. **Jouett.** The commissioner said that this question raised at this time is with respect to the relevancy of the examination of this particular item as connected with this inquiry. Of course, if it were relevant we would have to submit, no matter what the consequences might be.

Chairman **Meyer.** Do you deny the jurisdiction of the commission with respect to this item?

Mr. **Jouett.** No, sir; I do not. Our view is this, that the commission is limited by its own order to the 13 paragraphs of the Senate resolution which it has incorporated in its order calling or instituting this inquiry. This matter does not relate to any of those 13 paragraphs, so in no aspect of the case could it be relevant. It might be relevant in some other investigation, or if the question arose in some other way. We are making no question about withholding the information. We are willing to furnish the information to you so that you can see it is not relevant.

Chairman **Meyer.** With respect to the later furnishing of the information to the presiding commissioner, the commission has ruled, as I suggested before, that that should not be done.

Mr. **Jouett.** Mr. Commissioner, it is just like this: In a jury trial a witness is asked the question, and the matter is oftentimes submitted to the court as to the nature of the evidence or as to what the nature of the evidence is, so the court can say whether or not that is proper to go to the jury. Otherwise if it is stated—if the evidence is given to the jury—it goes in with whatever effect it would have. So if this question were answered and the details were gone into, either by this witness or anyone else, because the same question might arise with reference to any witness, the public would have all the information that is now carried in these vouchers; and even if the commission should hold it was incompetent, we would have no protection, your honor, because the damage would all have been done and no good would have been accomplished. When that evidence is offered we have the right to present it to the commissioner to determine whether it is competent, and if he says it is not competent to be offered, then it is excluded and there is no public exposé of the matter. It is not a matter that there is any objection upon our part with reference to otherwise.

Mr. **Folk.** We have no desire to unnecessarily embarrass the Louisville & Nashville Railroad Co., but this is an investigation by the Interstate Commerce Commission, partly on its own motion, into the practices of the Louisville & Nashville Railroad Co., partly by reason of a Senate resolution, and partly by reason of a suit or proceeding filed by Senator Lea before the commission. As a practice of the Louisville & Nashville Railroad Co. it is competent for the commission to inquire as to how it expends its funds. Here is one item of $295,000. The accountants for the commission were denied, according to the record, all information as to the purposes of the expenditure of this amount. If there may be any secret expenditure, then the Louisville & Nashville Railroad Co. may conceal all of its expenditures. I submit the witness ought therefore to be required to answer as to his knowledge concerning this expenditure.

Mr. **Stone.** Mr. Folk, have you got the order of the commission there instituting this investigation?

Mr. **Folk.** Yes; here it is.

Mr. **Stone.** Mr. Chairman, I think Gov. Folk has overstated the order of the commission in instituting this investigation. It is not a general investigation into the practices of the defendant railroad companies. On the contrary, as we read the order, it is confined to the subject matter set forth in the resolution of the Senate of the United States.

Mr. **Folk.** There was an order prior to that, Col. Stone.

Mr. **Stone.** It does not go beyond what is set forth in the resolution. The gist of the order will be found in the first paragraph thereof, which reads as follows:

> It is ordered that a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

I understand, notwithstanding the avowal of counsel for respondents in this proceeding, that this inquiry of Gov. Folk does not pertain to any of the matters and things set forth in that resolution, which we propose to prove by the witness, so far as his knowledge extends. It is insisted that your honor ought to hear this testimony, anyway, although it is beyond and outside the scope of the order made by the commission under which we are carrying on this investigation. We do not think this investigation can be enlarged in that manner but should be confined to the object and purpose of the order as set forth therein. We are summoned and notified to appear and answer that proceeding and none other.

Mr. **Jouett.** I would like to ask Mr. Smith just one question to make the record clear.

Will you state, Mr. Smith, whether or not, so far as you know, any of the expenditures referred to in Gov. Folk's question related to matters embraced in the twelfth paragraph, or any other paragraph, of the Senate resolution?

Mr. **Folk.** I object to that because the witness can not be the judge in the premises, and your question calls for a conclusion of the witness.

Mr. **Jouett.** It is a fact, and not a conclusion.

Mr. **Folk.** Whether it was spent——

Mr. **Jouett** (interposing). You asked him whether it was embraced within the Senate resolution.

Mr. **Folk**. It is a matter of the interpretation of the resolution, your honor. The first question I asked, Col. Stone, I embraced in that question the statement that the amount of $295,000 was used in connection with labor, and you gentlemen objected to that.

Mr. **Jouett**. You stated as a fact, Mr. Folk, as shown by the record, that that was expended.

Mr. **Stone**. I want to make this objection, that you have withdrawn the question, and it is no longer in the record, but if you put in its contents in this way you practically accomplish your same object by inquiring as to labor unions, etc., when you have withdrawn that question and put another one, and I think you ought to use that as your text for your discussion and not go outside of it.

Mr. **Folk**. You probably did not understand the information that I am trying to convey to you.

Mr. **Stone**. You began to talk about labor unions.

Mr. **Folk**. You were the one that began to talk about labor unions.

Mr. **Stone**. No, sir; you were the one just now that mentioned it.

Mr. **Folk**. The record shows the question as I originally propounded it to the witness embraced the statement that the $295,000 item had something to do with labor. You gentlemen objected to the statement that it had something to do with labor and said there was no proof of that. I accepted your suggestion and amended the question and merely asked for information as to what this $295,000 expenditure was about. The witness has not answered. We do not know whether it was about labor or what it was about. So all of this discussion is premature.

Mr. **Stone**. It seems to me we have a right to first have the witness state whether the item, so far as his knowledge extends, relates to anything in this Senate resolution. He certainly has a right to say whether it does or does not, so far as his knowledge goes. That is all we have asked the witness. If he should answer "no" then we want to predicate our objection on that answer and try to have this testimony kept out of the record.

Mr. **Folk**. If the witness could give his opinion on that, he could give his opinion on the entire case.

Mr. **Stone**. It is not an opinion.

Mr. **Folk**. The whole proceeding is incompetent, irrelevant, and immaterial.

Mr. **Stone**. Not at all. We are asking for his knowledge, or want of knowledge.

Mr. **Jouett**. Or as to the fact whether any of these items relate to any of the items set forth in the Senate resolution.

Mr. **Folk**. I submit they can not ask the question in that form. They may ask the witness if he knows what this $295,000 item was for, and if he doesn't know then that ends it.

Chairman **Meyer**. It seems to me the question of whether or not a certain matter falls within the scope of the commission's order is for the commission to decide. The commission can not decide until it knows what the facts are that are in issue.

Mr. **Jouett**. We all understand that, if your honor please, and that is just what we propose to hand over to you. We propose to hand over to you the vouchers and everything in them. We did not suppose that question would be brought up indirectly by a witness who could not know anything of the details. He would know the agent—but we object to putting into the record matters which we think are wholly incompetent. Mr. Harlan can be put on the stand, and we will give you all the vouchers so that the commission can then determine intelligently whether it is the proper subject of inquiry here.

Mr. Folk. Have you those vouchers here?

Mr. Jouett. No. We did not know it would come up.

Mr. Stone. We do not propose to put them into this record.

Chairman Meyer. I have already ruled, after a conference with my colleagues, that all items in the accounts of a common carrier were the subject of public investigation at the hands of the commission. This question I did not submit to my colleagues because it had not been raised—that is, the question of the relevancy of this particular voucher to this inquiry. I realize it is a very important question; but since we can not now terminate our proceeding and finish the investigation, I should prefer to submit this specific question to the commission in conference, when we can carefully examine together this resolution and this order and see whether it properly falls within its scope.

Mr. Stone. Would not your honor permit the witness at least to answer that, so far as his knowledge extends, it does not pertain to any item in this investigation?

Chairman Meyer. I have no objection to the witness stating whether he believes it falls within the scope of the order or not. I have suggested before that is for the commission to decide, but I am perfectly willing the witness should express his opinion about that.

Mr. Jouett. Just answer the last question.

Mr. Smith. What was the last question?

(The stenographer thereupon read the pending question as previously recorded.)

Chairman Meyer. Mr. Jouett, let me point this out to you: Before that question can be answered, is it not necessary to determine whether the items embraced within that expenditure fall within the scope of the order?

Mr. Jouett. We can pass that.

Chairman Meyer. This will be a conclusion based upon that detailed investigation of the various items.

Mr. Jouett. We will pass it now.

Mr. Stone. Your honor has heard the avowal of counsel as to what these matters pertain to. We want to present to the commission the question as to whether it is competent in this investigation.

Mr. Folk. You remember, Col. Stone, that was stricken from the record.

Mr. Stone. What was?

Mr. Folk. That question embracing information as to this item being in connection with labor was stricken out, so there is nothing on the record as to what this is about.

Mr. Stone. I am not talking about your question that is stricken out. I do not think about what is dead and gone if I know it.

Mr. Folk. Do you now say it did have something to do with the matter we are now discussing?

Mr. Stone. I do not want the record to stand with the avowal of counsel that the items going to make up this sum which you have mentioned in your question appear in the item in this investigation covered by the senate resolution. We propose to prove, so far as this witness is concerned, that he has no knowledge that any amount embraced in that sum does come under any of the paragraphs of the senate resolution.

Mr. Folk. Our position is that the commission should determine that question, and, in order to determine it, the commission has to know something of what this item was about. As far as we now know, it may have been for political purposes, or it may have been to buy a railroad. We don't know what it was about.

Mr. Jouett. We thought the matter would be passed, under what the commissioner says, until Mr. Harlan is put on the stand, and we will offer everything then to be considered as a whole.

Mr. Stone. I do not want them to understand Mr. Jouett's statement that we propose to put these vouchers into this record, because that would accomplish all the injury that would result in an open investigation. We have offered heretofore to submit them either to Gov. Folk or to any member of the commission—chairman or any other member—who desires to look at them, but not to take copies and form a part of a public record. We think it would be so injurious to the affairs of the defendant companies that it ought not to be tolerated either by the commission or the courts, and we don't believe it will be done when it is fully understood.

Chairman Meyer. It seems to me counsel have defined their position very clearly upon the record, and I shall endeavor to present these matters to the commission at an early date.

Mr. Folk. Mr. Smith, do you know anything about the committee of 21 in connection with the enactment by Congress of the workingmen's compensation act?

Mr. Smith. I never heard of it.

Mr. Folk. Do you know Mr. R. E. Flemming?

Mr. Smith. Oh, yes; I know him.

Mr. Folk. What is his connection with the Louisville & Nashville Railroad?

Mr. Smith. He is an employee.

Mr. Folk. In what capacity?

Mr. Smith. He is an employee of the immigration and industrial department, and what might practically be termed the "legislative agent."

Mr. Folk. The legislative agent?

Mr. Smith. Only for——

Mr. Folk (interposing). Kentucky?

Mr. Smith. Only for Kentucky; yes, sir. That occupies his time for two months about once in two years. The balance of his time he devotes to the industrial and immigration end of the business.

Mr. Folk. What are his duties as legislative agent of the Louisville & Nashville Railroad Co. in Kentucky?

Mr. Smith. To keep advised of the proceedings in the legislature and to do what he can to prevent injurious legislation, and I think during the last legislature he rendered assistance to Col. Stone in enacting some legislation. I don't know very much about it, though.

Mr. Folk. To do what he can in defeating injurious legislation?

Mr. Smith. Legislation affecting the Louisville & Nashville Railroad Co., yes: that is, legislation injuriously affecting the Louisville & Nashville Railroad Co.

Mr. Folk. Is it his duty to become acquainted with members of the legislature?

Mr. Smith. I don't know how he proceeds.

Mr. Folk. To take them out to dinners and to entertain them?

Mr. Smith. I don't think he does much of that, but I don't know.

Mr. Folk. Who is your legislative agent in Alabama?

Mr. Smith. I don't know that we have any. I think that work is watched or under the supervision of the district attorney.

Mr. Folk. Mr. Jones?

Mr. Smith. I think Mr. Jones gives that his attention.

Mr. Folk. Who is your legislative agent in Tennessee?

Mr. Smith. I don't know that we have any there. There was one very able and very useful man who, I suppose, would be so designated but who is now deceased. He died, I think, within the last year. He had been in bad health for some time before. I think there is another one, although I have never met him, and I don't now recall his name.

Mr. Folk. Do you know Mr. Hudson?

Mr. Smith. No, sir; I don't.

Mr. Folk. Do you know Mr. McConnell?

Mr. Smith. No. They represent the Nashville, Chattanooga & St. Louis Railway Co.

Mr. Folk. In doing their work for the Nashville, Chattanooga & St. Louis Railway Co., do they not also work for the Louisville & Nashville Railroad Co.?

Mr. Smith. If they are working in the interest of the Nashville, Chattanooga & St. Louis Railway Co. to protect that company against injurious legislation, the Louisville & Nashville Railroad Co. would be benefited by anything they accomplished.

Mr. Folk. Do any of those legislative agents have any authority to expend any money?

Mr. Smith. I don't know; but I assume they do; any expenses that are incurred. They would be reimbursed for any expenses they incurred.

Mr. Folk. Do they work under your direction?

Mr. Smith. No, sir; they do not.

Mr. Folk. Who is your legislative agent in Georgia?

Mr. Smith. I don't think we have any.

Mr. Folk. The Georgia Legislature gives you no trouble?

Mr. Smith. We haven't very much mileage in Georgia. If there is anything of that kind done, it would be done, I should say, by the Georgia Railroad. The Louisville & Nashville Railroad Co. is a joint lessee with the Atlantic Coast Line and the Atlanta & West Point Railroad, in which the Louisville & Nashville Railroad Co. is indirectly interested.

Mr. Folk. Do you know of the Western & Atlantic Railroad, owned by the State of Georgia and operated between Chattanooga and Atlanta under a lease by the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. Smith. Do I know it?

Mr. **Folk.** Yes.

Mr. **Smith.** Yes; I have known it for something like 50 or 60 years. Don't make that quite so long. I will say 52 years; possibly something like that.

Mr. **Folk.** Do you know whether or not the Louisville & Nashville Railroad Co. is now engaged in an effort to parallel this railroad?

Mr. **Smith.** No, sir.

Mr. **Folk.** And that the Georgia Legislature has enacted legislation to prevent this attempt?

Mr. **Smith.** The Louisville & Nashville Railroad is indirectly interested in at attempt on the part of the North Georgia Mineral Railroad forming a connection on its line somewhere north of Cartersville, and the authorities, or some of them, in the State of Georgia are opposing it because they assume it will have some effect on the leasing of the W. & A. Railroad or disposing of the W. & A. Railroad when the present lease expires. That is the ostensible proposition. There is a division of opinion among the people of Georgia, I think. Some of them are in favor of the connection being constructed. It is only about 40-odd miles, and some of them are in favor of it being constructed in order to let the Louisville & Nashville Railroad into Nashville on its own rails instead of, as now, over the rails of the W. & A. Railroad. I do not know that it would be any more of a competitor of the W. & A. Railroad than it is now.

Mr. **Folk.** Did the Louisville & Nashville Railroad Co., as far as you know, make any effort at the time of the legislation in the State of Georgia to prevent the Louisville & Nashville Railroad paralleling the Western & Atlantic?

Mr. **Smith.** I don't think they did. If they did, it did not amount to anything, because they passed it all the same. I don't think there was any opposition on the part of the representatives of the Louisville & Nashville Railroad Co.

Mr. **Folk.** You say the Louisville & Nashville Railroad Co. now enters Atlanta over the tracks of the Western & Atlantic from Cartersville?

Mr. **Smith.** From Cartersville and from Marietta. They have two lines connecting.

Mr. **Folk.** Do you know what consideration the Louisville & Nashville Railroad Co. pays to the Nashville, Chattanooga & St. Louis Railway Co. for its trackage rights?

Mr. **Smith.** I don't know. I think it is on a user basis.

Mr. **Folk.** You say the purpose of the Louisville & Nashville Railroad Co. in endeavoring to parallel the Western & Atlantic is to get into Atlanta?

Mr. **Smith.** I don't know anything about paralleling the W. & A. Railroad. I say the object of trying to construct a railroad connecting the present Louisville & Nashville main line, near a point called Whites, some miles north or northeast of Cartersville, to a point of connection with its tracks near Atlanta which have already been constructed, is to enter Atlanta on its own rails with its own traffic instead of over the rails of the W. & A. Railroad.

Mr. **Folk.** Mr. Smith, a large quantity of cotton for export goes through Mobile and Pensacola, does it not?

Mr. Smith. I don't know whether you would call it large or not. That is a relative term. I should say as compared with New Orleans it would not be large. Cotton is exported through Mobile and through Pensacola.

Mr. Folk. The Louisville & Nashville Railroad Co. has terminals at Mobile and terminals at Pensacola, has it not?

Mr. Smith. It has a very limited terminal at Mobile for the interchange of traffic with seagoing vessels. It has very comprehensive and commodious facilities for the interchange of seagoing traffic at Pensacola.

Mr. Folk. And it is the endeavor of the Louisville & Nashville Railroad Co. to have this traffic go to Pensacola?

Mr. Smith. No; we don't care which way it goes so that we get the transportation of it—Pensacola, Mobile, and New Orleans. It doesn't make any difference to us.

Mr. Folk. Who is Mr. Bywater?

Mr. Smith. He is the agent of the Louisville & Nashville Railroad Co.

Mr. Folk. Where?

Mr. Smith. At Louisville. He looks after the export traffic, the securing of export traffic and making arrangements for export traffic with seagoing vessels. He is termed the foreign freight agent. That is his title.

Mr. Folk. Can you state whether or not when cotton is shipped to Mobile for export the Louisville & Nashville Railroad Co. requires the shipper or the steamboat lines to report their bookings or ocean rates to Mr. Bywater before a through bill of lading is issued?

Mr. Smith. I don't know about the details. Of one thing you may be assured, however, that any regulations governing any such matters at Mobile also apply to other ports such as Pensacola and New Orleans.

Mr. Folk. Mr. Bywater is also booking agent of the Gulf Transit Co., isn't he?

Mr. Smith. I don't think he is the booking agent of the Gulf Transit Co. I don't think he has anything to do with it. That is merely an agency to look after such business at Pensacola.

Mr. Folk. To look after what business at Pensacola?

Mr. Smith. The export business. They handle it there locally. I am not quite sure about it, but he may have had something to do with looking after the steamers that were owned by the Louisville & Nashville Railroad Co. at one time. I am not advised as to the details.

Mr. Folk. The Gulf Transit Co. is a corporation with stock of $82,300 owned by the Louisville & Nashville Railroad Co., is it?

Mr. Smith. I don't know.

Mr. Folk. It is an agency of the Louisville & Nashville Railroad?

Mr. Smith. Yes; I think so.

Mr. Folk. The Gulf Transit Co. owns the Pensacola Trading Co.?

Mr. Smith. How is that?

Mr. Folk. I say the Gulf Transit Co. owns the Pensacola Trading Co.?

Mr. Smith. The Pensacola Trading Co. is, I think, a British corporation. The title of the stock may be in the Gulf Trading Co., I don't know. That is a mere detail.

Mr. **Folk.** And the Pensacola Trading Co., up to last year, owned the steamer *Belmont?*

Mr. **Smith.** The title may have been that; yes. It is a British corporation, and the vessels are under the British flag, and it may be in the Pensacola Trading Co., and probably is.

Mr. **Folk.** The Louisville & Nashville Railroad Co., through the Gulf Transit Co. and the Pensacola Trading Co., own the steamers *August Belmont* and *Salt Marsh?*

Mr. **Smith.** Yes.

Mr. **Folk.** And they are sailed under the British flag?

Mr. **Smith.** Yes.

Mr. **Folk.** Why are they sailed under the British flag? Why not under the American flag, can you tell us?

Mr. **Smith.** I would rather not go into that.

Mr. **Jouett.** We think that is a wholly immaterial matter.

Mr. **Smith.** I would rather not go into that, because it brings up the question of why the people of the United States have not sufficient vessels under the American flag.

Mr. **Jouett.** I will have to object to that.

Mr. **Folk.** He is answering it pretty well.

Mr. **Jouett.** I think the commission can see that it is incompetent. It has no bearing upon this at all. It is simply a matter of idle curiosity.

Mr. **Folk.** It is not a matter of idle curiosity as to why the Louisville & Nashville Railroad Co. sails those steamers that it owns under the British flag.

Mr. **Jouett.** Does it have any bearing upon this question?

Mr. **Folk.** It may have a bearing. We can't tell until we get the facts.

Mr. **Jouett.** If counsel can not suggest any possible bearing, then I see no reason why he should ask the question.

Mr. **Stone.** With all of his ingenuity——

Mr. **Folk** (interposing). I am not insisting that he go into a discussion of the maritime laws of the United States, but I am asking if there is some particular reason why the Louisville & Nashville Railroad Co. uses the British flag.

Mr. **Jouett.** It is a long story.

Mr. **Smith.** It becomes a political question which is being discussed up at the Capitol, and I do not care to go into that unless you insist on it.

Mr. **Folk.** The La Follette law had nothing to do with it?

Mr. **Smith.** I don't know about the La Follette law. The laws of the United States practically prohibit American citizens from owning vessels engaged, or to be engaged, in international traffic, and that is the reason why such vessels are not owned to any very great extent by American citizens, and why American citizens, who want to own such vessels, are compelled by the conditions to use the flags of foreign nations. I do not think we want to go into that, at least I don't want to.

Mr. **Folk.** The Louisville & Nashville Railroad Co. sold those steamers about a year ago, and they are now owned by American citizens and they are now under the American flag, are they not?

Mr. **Smith.** They may have done so, but I think not. I don't know about that. One of them was taken over by the British

Government. I don't know about the other one. I don't know who owns it now if the parties to whom we sold it have disposed of it.

Chairman **Meyer**. The witness has given us a general sort of an answer, and the details, I imagine, should more properly go before the Committee on Merchant Marine and Fisheries.

Mr. **Jouett**. I think so.

Mr. **Folk**. Will you tell us, Mr. Smith, whether the information Mr. Bywater receives as foreign freight agent of the Louisville & Nashville Railroad Co. enables him, as booking agent of the Gulf Transit Co., to quote lower ocean rates to shippers of Pensacola, and thus obtain the cotton-export traffic for Pensacola?

Mr. **Smith**. I don't know. If he got a lower ocean rate from Pensacola than he could get from Mobile, he would quote a lower rate to the shipper. If he got a lower rate for ocean transportation from Mobile than he did from Pensacola he would naturally quote a lower rate through Mobile, and the same thing would apply to New Orleans. It would depend upon the ocean rate. I don't know as to the details.

Mr. **Folk**. The Atlantic Compress Co. owns a compress at Pensacola, doesn't it?

Mr. **Smith**. I don't know.

Mr. **Folk**. And the Louisville & Nashville Railroad Co. owns stock in the Atlantic Compress Co.?

Mr. **Smith**. I think they do—a small amount. Doesn't the Atlantic Compress Co. compress—or own compresses, rather—in various parts of the South? I think they own one in Decatur, which burned within the last few days.

Mr. **Folk**. Does the Louisville & Nashville Railroad Co. own any stock or any interest in a compress at Mobile?

Mr. **Smith**. I don't know. I think it owns stock in the Atlantic Compress Co.

Mr. **Folk**. The Louisville & Nashville Railroad Co. issues through bills of lading on cotton by Pensacola, adding the cost of compression at Pensacola, and refuses to issue such bills of lading by Mobile; isn't that a fact?

Mr. **Smith**. I don't know.

Mr. **Folk**. Who would know about that?

Mr. **Smith**. The traffic officials.

Mr. **Folk**. Can you tell us what relations the Louisville & Nashville Railroad Co. had with the Ryman Line or boats on the Cumberland River?

Mr. **Smith**. When?

Mr. **Folk**. At any time during the last 10 years.

Mr. **Smith**. The last few years?

Mr. **Jouett**. The last 10 years, he said.

Mr. **Folk**. From 1885 on.

Mr. **Smith**. I don't know that the Ryman Line exists. The founder of the Ryman Line has been dead, I suppose, 10 or 15 years.

Mr. **Folk**. We will go back to 1885.

Mr. **Smith**. That is 31 years.

Mr. **Folk**. Do you know anything about the relations at that time?

Mr. **Smith**. We had relations with the Ryman Line for a number of years, and probably have some relations with its successor on the

Cumberland River, whether it is owned by the Ryman Line or some other line. We interchange traffic with the river line.

Mr. **Folk**. Can you tell us whether this line was subsidized by the Louisville & Nashville Railroad Co.?

Mr. **Smith**. Never.

Mr. **Folk**. Do you know Mr. F. T. Rhea, president of the St. Louis & Tennessee Packet Co.?

Mr. **Smith**. You have the name wrong. It is I. T. Rhea.

Mr. **Folk**. It is?

Mr. **Smith**. Yes. I know him very well. I used to know him well. He has not been very active in those affairs, and I don't think I have seen him for several years. He and his father before him were enterprising grain merchants in Nashville.

Mr. **Folk**. Did you inform Mr. Rhea, at a conference in Nashville, that you would not allow the operation of this packet line, because it would actively compete with the Louisville & Nashville Railroad?

Mr. **Jouett**. When was that, Governor?

Mr. **Folk**. In 1886.

Mr. **Jouett**. We submit that is 30 years ago.

Mr. **Smith**. What packet line are you referring to?

Mr. **Folk**. The St. Louis & Tennessee Packet Co.

Chairman **Meyer**. If the witness remembers.

Mr. **Smith**. I don't know whether I do. If Mr. Rhea says I did, then I did, but I don't believe he will say so.

Mr. **Folk**. Do you know who controls the stock of the St. Louis & Tennessee River Packet Co. at this time?

Mr. **Smith**. No, sir; I don't.

Mr. **Folk**. Do you know Capt. Lee Howell, of Indianapolis?

Mr. **Smith**. No, sir.

Mr. **Folk**. Do you know whether he controls the stock of the St. Louis & Tennessee River Packet Co. at this time?

Mr. **Smith**. I don't know, but I don't think he has any stock in it. That is my opinion.

Mr. **Folk**. Can you tell us whether or not the St. Louis & Tennessee River Packet Co. is now an active competitor of the Louisville & Nashville Railroad Co.?

Mr. **Smith**. I don't know. It has operated, and I suppose is still operating, as a connection. It interchanges traffic with the Louisville & Nashville Railroad at a place called Tennessee River Station, where we cross the Tennessee River with our Memphis line. As far as I know the relations may have been changed, but I think they are still on friendly terms or friendly connection, and possibly were before that, but I think to a very limited extent.

Mr. **Folk**. Do you know Capt. Staples, of Mobile, Ala.?

Mr. **Smith**. I do know him. I probably met him five times.

Mr. **Folk**. Did you or the Louisville & Nashville Railroad Co. advance Capt. Staples any money for the purpose of conducting a rate war on the Alabama River?

Mr. **Smith**. A rate what?

Mr. **Folk**. A rate war.

Mr. **Smith**. No, sir; we do not do that sort of business.

Mr. **Folk**. Did you advance Capt. Staples any money?

Mr. SMITH. If you will permit me, Mr. Folk, if you want a complete history of that, I will give it to you.

Mr. FOLK. You need no go into detail. You can state generally, if you prefer.

Mr. SMITH. I do not see how I can do anything else. I can not let you go on and make up a case for me.

Mr. FOLK. Did you advance $50,000 to Capt. Staples?

Mr. JOUETT. Wait a minute. You have asked him a question.

Mr. FOLK. I was giving that further information.

Mr. STONE. He can cover it with one answer, I expect.

Mr. SMITH. On October 6 and 7, 1913, a magazine writer came to me by appointment, stating that he had been for six months investigating the affairs connected with the Louisville & Nashville Railroad, and, among other questions, was this—now, this is a statement of this magazine writer:

> The Norman Staples case at Mobile, in which the correspondence shows that President Smith, writing on private letter paper, conducted through Capt. Staples a successful fight against the Birmingham & Gulf Steamboat Line, and then foreclosed on Staples through Gregory L. Smith, of Mobile, L. & N. attorney, who, according to the bill of sale, acted as trustee. The correspondence shows that the money in all these transactions passed through the National Park Bank of New York or the National Bank of Commerce of Louisville, and that the mortgages on Staples's boats were taken in the name of E. J. Buck, president of the City Bank & Trust Co. of Mobile. If, as Mr. Smith has since admitted over his signature, the L. & N. advanced this money to Staples, why were these indirect methods necessary? I assume there was some legitimate reason, and I should be glad to get that side of the story. Staples committed suicide on the day his boats were sold, and it is charged that he went insane in the belief that by driving the B. & G. Transportation Co. out of business he had committed a serious crime, for which he could be made to suffer a long term of imprisonment. Also there is the charge in this transaction that the L. & N. put a man in the employ of the B. & G. for the purpose of ascertaining the financial condition of that company.

Mr. JOUETT. Mr. Smith, that which you have just read was his statement, was it?

Mr. SMITH. That is the statement of this magazine writer. I then say:

> There are numerous errors in the foregoing statement.
>
> Two widely diverging points of view are held relative to the relations of transportation lines and their patrons.
>
> One, which is very generally held by the public, is that transportation lines must compete, and by competition they mean that they must endeavor to destroy each other by reducing rates. That view is, as I have said, very widely held, and is held by many legislators who introduce bills in legislative bodies, including Congress, in a futile effort to enforce a continuation of destructive competition. Such view has been disseminated largely by mismanagement of transportation lines, rail as well as water. In the past so much of such mismanagement has been indulged in that it became almost a matter of course when two transportation lines, rail or water, were in competition that they must endeavor to destroy each other by reducing rates. It was almost a certainty that when a new railroad was constructed that came in conflict with an existing line there was a war of rates. This was true also of water lines. It was easy in the olden days, when steamboat business was more important than it is now, when a boat line was prosperous to put in another boat, which usually resulted in the bankruptcy of one or both. I will give some illustrations:
>
> For many years the principal transportation line between Louisville and Cincinnati was the United States Mail Line. They did a large and, I believe, a profitable business. In 1865, when I first came to Louisville, this boat line was the main connection of the Louisville & Nashville Railroad Co. for business passing between points on its line and Cincinnati and beyond. They ran two large boats each way per day. Early in 1865 an opposition line known as the

People's Line was started. They employed a popular steamboat man as manager, provided the necessary wharf boats, etc., and the two lines contended with each other, making a rate of 5 cents per hundred, regardless of bulk or character of package, between Cincinnati and Louisville. It resulted in the old line outlasting the new one, and I do not think the United States Mail Line has had any serious competition from water-transportation lines since.

Mr. CONNOLLY. Still running?

Mr. SMITH. Yes; but not doing much, because since that time the rail line from here to Cincinnati on the south side of the river has been built and bridge across the Ohio River constructed, permitting the rail lines on the north side of the river to compete, so that the bulk of the traffic has been diverted to the rail lines, the Mail Line, however, continuing to handle some traffic between Cincinnati and Louisville and between local points not reached by railroad.

Charles Morgan was a noted steamship man, owning numerous boats plying on the Atlantic Ocean and the Gulf. For many years he operated a line of boats between New Orleans and Mobile, using a short railroad known as the Pontchartrain Railroad between the landing on Lake Pontchartrain and the city of New Orleans. He was an able man. About 1869 or 1870 New York and New England capitalists provided capital to build a railroad between New Orleans and Mobile. When they commenced operations a war of rates was inaugurated between the railroad and the steamboats and the rates were made nominal. The rate on flour per barrel was 3 cents. Mr. Morgan's agents and managers, one of whom was his son-in-law, urged him to let the other line have it; that they were losing money; 3 cents did not pay the cost of handling. His reply was: "No; don't let them have even the appearance of doing business." I can not give the result accurately, but they sold the road to Mr. Morgan and took over his boats. When the road was transferred the engineer and superintendent of the railroad went to Mr. Morgan's manager at night and told him that the road was not safe to operate; was liable to drop into the water; there were many miles of trestles and the teredo was destroying them. Some arrangement was made whereby Mr. Morgan received his boats back but retained that portion of the road that had been constructed west of the Mississippi River and most valuable terminal property in New Orleans, while the original owners received back the road between New Orleans and Mobile. The portion of the line retained by Mr. Morgan, west of the Mississippi River, was extended and known for many years as Morgan's Louisiana & Texas Railroad, and is now a part of the Southern Pacific Railway system.

For many, many years the railway managers failed to regulate competition—were at the mercy of the big shipper.

I have always held that such traffic management, especially on the lines north of the Ohio River between the Atlantic seaboard and the Mississippi River, was idiotic, criminal. In contentions between the various lines transactions were made that at the present day are almost unbelievable. For instance, many hundreds of carloads of live stock were at one time transported from East St. Louis to New York for $1 a car. I believe it was in 1874 when a representative of the Merchants' Dispatch (New York Central lines) at Cincinnati—a man by the name of Wight—entered into a contract with the largest dry-goods house there for one year to transport property from New York to Cincinnati for a rate of 25 cents per hundred for first class and proportionate rates on other classes. When the traffic manager of the New York Central lines heard of the transaction, instead of canceling the contract, he made that the basis of rates from all seaboard points to all points north of the Ohio and east of the Mississippi River for a year.

In 1870 the Georgia Central was extending what is now known as the Western Railway from Montgomery to Selma. Mr. William M. Wadley, a very able man, was president of the Georgia Central. Before the extension was completed a railroad had been extended from Selma up to Rome and Dalton, Ga., known as the Selma, Rome & Dalton, forming a through line in connection with the road from Dalton to Norfolk; and Selma being a considerable local cotton market, cotton was moved in considerable quantities from Selma via Norfolk to New England mills. Before the road between Montgomery and Selma was completed Mr. Wadley went with his officials to Selma to meet the representatives of other roads to endeavor to agree upon rates for the transportation of cotton to the North Atlantic seaboard and points reached thereby. The Selma, Rome & Dalton Railroad had entered into a contract with a compress and warehouse, whereby the warehouse company was to receive cotton, store it, compress it, and load it on to cars, guaranteeing to load not less than

20,000 pounds per car, which was much more than was being done by other compresses. At the conference a committee of traffic agents was appointed. Mr. Wadley sat by, and when the representative of the Norfolk route explained his arrangement for receiving cotton with the privilege of compressing and paying 16 cents per hundred out of the rate for receiving, storing, compressing, loading, etc., Mr. Wadley announced his determination to make the same rate on uncompressed cotton that the other line made with the privilege of compressing; i. e., his rate would be 16 cents per hundred less than the rate of the competing line. There was delay in completing the road between Montgomery and Selma, until perhaps January, when a considerable part of the cotton had already been forwarded; but from the time his line did commence operations until the close of the season it transported cotton to Savannah for nothing, the rate received being only sufficient to pay the steamship lines' proportion.

The trunk line railroads are still censured for what is known as the evener agreement, made with the Standard Oil Co., for evening oil shipments.

An evening contract was also operated for a time on live stock shipped from Chicago to the Atlantic seaboard.

As bearing on the conditions that existed in the earlier days, I will put in a copy of a letter which I wrote on February 7, 1875.

(See Exhibit E-1.)

(The paper thus referred to as Exhibit E-1 is as follows:)

FEBRUARY 7, 1875.

WM. H. VANDERBILT, Esq.,
V. P., N. Y. C. & H. R. R.;
Hon. H. J. JEWETT,
Prest. Erie Railway;
Col. THOS. A. SCOTT,
Prest. Penna. R. R.

GENTLEMEN: At the meeting of railroad managers and commissioners held at the St. Nicholas Hotel on the 3d instant, I was without premeditation drawn into the discussion on certain points and failed through diffidence and want of preparation to do the subject justice.

As no one present seemed disposed to frankly discuss the important questions before the meeting or to suggest any plan for future action whereby the existing disgraceful condition of transportation tariffs might be improved, I have since regretted that I did not avail myself of the opportunity to present my views more fully.

There were three persons present at the meeting who had and have the power to do much toward placing the transportation business between the East and the West on a healthier basis.

I refer to the gentlemen whose names I have taken the liberty of placing at the head of this communication—the managers of the trunk lines.

First, let them adopt rates and agree to maintain them. Then let them do precisely as they agree. Labor to convince each other of their sincerity of purpose. Impress the same upon their general freight (and passenger) agents. Require them to have confidence in one another. Proceed to extreme measures to accomplish this result if necessary. If it can not be attained in any other way, I suggest that they have an office in common, receive reports from and give instructions to their subordinates, carry on all negotiations with shippers and others in each others' presence, as well as each peruse the correspondence of the others.

Keep them face to face until they can trust one another "out of sight." When this is accomplished they should continue to confer daily relative to common competitive business. Under any and all circumstances require them to do as they agree.

What I have said applies to east as well as west bound shipments.

On eastbound business you should unitedly require your western connections to maintain agreed or established rates. It is not sufficient that you exact your pro rata proportion of such rates.

Without your aid western roads are helpless. Without your firm and impartial interposition they will as surely fail to maintain rates with each other as night follows day.

The interests of your own companies require that you do everything in your power to keep your connections from bankrupting. I repeat that it is impossible for your numerous western connections, with their almost innumerable complications and combinations, to maintain rates with each other if you continue your present policy of carrying freight at the same rate per mile that any of them may bring it to you for. If you have found it nearly or quite impossible to keep faith and maintain rates with each other, how can your western connections hope to succeed when the parties to the agreement are so much more numerous?

It is doubtless true that officers or agents of roads on which shipments originate, when not subject to local influence, may have a clearer idea of what the rates should be than the agents at the other end of the line. Experience shows that there is little difficulty in inducing agents of competing roads to agree upon what rates ought to be charged. The difficulty is in their failure to adhere to them. Therefore, when rates are agreed upon, let the trunk lines insist upon their being observed by all parties.

The history of cotton shipments from Memphis for past eight or nine years is a fair illustration of the views I have endeavored to express. While the agents of all lines were in that market and left to themselves they would establish rates only to violate them. During the season of '71–2, at the earnest solicitation of the writer, the Messrs. Hills for the N. Y. C. & H. R. R. R. lines, Mr. D. S. Dray for the Pennsylvania lines, and Mr. J. M. Osborne for the Erie line entered into an agreement to require all connections to adhere to the established rates. This agreement was renewed in '72–3 and again in '73–4, and so long as the parties to the compact did as they agreed rates were maintained. The moment they relaxed rates declined.

The writer endeavored to induce the parties to renew the arrangement for the current season, but Mr. Hills, of the Lake Shore, was unwilling to do so on account of the announced policy of the N. Y. C. & H. R R. R. Co. of prorating any rate made by western roads on eastbound business, he justly fearing that any arbitrary position assumed by him would throw the business over the Canada Southern and Great Western Railroads.

The result has been that the Blue Line via Cairo and Chicago and the White Line and Canada Southern via Cairo, Evansville, and Toledo established commission agencies paying over $1 per ton (25 cents per bale of 475 pounds) for soliciting shipments and signing bills of lading, and then delegated them (the agents) the power to name rates, i. e., instructed them to meet the rates of competing lines. First, give an agent a fund to pay rebates with, without reserving the power to regulate its disbursement; then, say, make as low rates as any other line. A businesslike transaction, truly!

Under this arrangement the N. Y. C. & H. R. R. R. and connections are transporting cotton to interior New England points, to many of which they have little or no competition, for less than one-half cent per ton per mile. Had all lines been required to maintain rates, from 1 to 1¼ cents could have been secured as heretofore.

Is it possible to devise a more perfect plan for self-destruction, or a more suicidal, idiotic one for self-preservation?

Here are two "scalpers" soliciting business for the N. Y. C. & H. R. R. R. and connecting line, given the authority to make rates over nearly 1,500 miles of railroad, slashing away at each other and everybody else, forcing all lines participating in carrying cotton between the Mississippi River and the East to transport nearly one-half million bales at less than the cost of transportation, that they who would gladly accept employment at a salary of $200 per month may receive a commission so out of proportion to the service performed that the only conclusion that can be drawn is that the real object of the arrangement was to provide a fund for destroying rates.

Railroad companies or lines that employ agents on commission, like those that employ commission lines, whereby a fund is created not subject to their control, are debarred from making agreements to maintain rates, for the reason that they have placed it in the power of their employees to violate rates without their knowledge or consent.

When the commission paid to a line reverts to a railroad, i. e., when the line is owned and its accounts audited by a railroad company, the objectionable feature is obviated. It is well to bear in mind that neither the Baltimore & Ohio nor the Grand Trunk Railroad Companies have had anything to do with this business. The irregularities have been committed by companies party to the Saratoga compact.

So far I have simply endeavored to indicate the only plan that presents itself to me for immediate relief. As it, if adopted, can not be considered a permanent cure for existing evils for the reason that even presidents of trunk lines do not control all railroads, and are besides subject to human weaknesses, may lose faith in each other, etc., I will add a few words relative to the probability of a more permanent plan being devised.

The failure of the recent attempt to regulate rates by establishing the two boards of eastern and western commissioners was foregone. The managers never seemed to have any clear idea of how they were to operate; no plan or system. The commissioners seemed wholly unable to devise any, and helplessly looked to the managers for specific instructions. I feel sure that they (the commissioners) have at no time been satisfied with the result of their operations.

The only commendable thing connected with the movement is that the trunk lines seem to have been able to maintain a low tariff on westbound business from August until January 20. This of itself is a very important matter, not so much from the pecuniary results as showing that it is possible for them to keep faith with each other. The advance of rates westbound January 20 seems to have been unfortunate, as there is evident weakness on the part of some, if not all, of the trunk lines, and consequent danger that the prestige gained during past six months may be lost.

The manager of the company by which the writer is employed never believed the attempt to regulate rates, etc., by the commissioners devised at Saratoga would be successful, but signed the contract because he did not desire to discourage any sincere effort toward reform by keeping aloof and prophesying failure, preferring rather to render it all the aid in his power, notwithstanding he believed it would result unfavorably.

The result has been injurious to the interests of his company.

The eastern commissioners advanced rates in August to points in Tennessee, Alabama, and Mississippi without conferring with southern lines who have the shortest route to that territory and who transported a large portion of the business. They did not even give them notice of the advance and left them to make such rates as they deemed proper, virtually surrendering the business to them by establishing inflexible rates via Louisville without soliciting their cooperation. The Louisville & Nashville Railroad Co. explained and protested but elicited no response.

They again advanced rates on January 20 without making the slightest effort to secure the cooperation of the competing lines, again failing to even give them notice of their advance.

The western commission established rates on cotton from Memphis taking effect October 26. The Louisville & Nashville Railroad Co. adopted and maintained them until December 1, suffering an almost entire loss of business during that time, while the commissioners were wholly unable to enforce the rates by lines working via Cairo, Chicago, and Toledo, notwithstanding they were furnished with full information, correspondence, etc.

Since December 1 the L. & N. R. R. Co. has been compelled to compete at current rates.

Still the effort seems to have been prompted by a yearning in the right direction. It must be apparent that nothing permanent can be effected until some strong general organization is perfected. The managers that met at Saratoga either did not comprehend the necessity for radical measures or were unwilling to delegate any of their authority. They devised two boards of commissioners subject to their control. Instead of placing the commissioners in authority over themselves, they (the managers) simply undertook to transmit their instructions to their agents through the commissioners. The foregoing may not have been the intent of the managers that drew up the contract, nor does a literal interpretation of that instrument justify such a construction of its meaning, but such was the actual operation of the western commission under it.

Another serious mistake was in creating two commissions composed of several persons of equal authority. This of itself was disastrous. Such a movement to be successful must concentrate supreme authority somewhere. Instead of 2 commissions of 10 commissioners there should be 1 commission consisting of 1 commissioner, he to appoint or employ as many assistants as he may deem necessary.

Again, any compact between corporation or individuals of diverse interests that can be annulled on notice, or whenever any one party to it may consider himself aggrieved personally, or imagines or believes that the interests intrusted to his charge be served by withdrawal, or who may think he can obtain advantage by acting independently, while his competitors are bound by the terms of the compact, etc., can be of but temporary duration.

None should be made unless all parties are to be benefited and all bind themselves to adhere to it for a stated period.

Again, the power to compel all parties to the agreement to adhere to its provisions should be given.

It is, of course, difficult to devise a comprehensive plan or system and still more difficult to induce railroad managers to commit themselves fully to it. Perhaps the object might be attained by forming a corporation in which each railroad company should take stock in proportion to the amount of competitive business done by each; the authority to adjust rates, decide all disputed questions between railroad companies that may be stockholders arising from competition for business, and such other authority as may be deemed best, to be delegated to the president of such corporation who may be elected by a two-thirds or three-fourths vote of all the stock issued. The stock held by any company to be forfeited on failure to adhere to the rules and regulatins of the organization on failure to promptly obey the orders issued by the president, etc.

The principal difficulty (always assuming that the trunk lines are in accord) will doubtless be to find a man competent to work out such a plan, present it to railroad managers and directors in such a manner as to convince them of its practicability, that the interests they serve will be benefited by adopting and sustaining it; that they can delegate the necessary authority without derogation to their own dignity and importance; one that is possessed of the required practical experience and knowledge of the transportation business and commerce of the whole country; that comprehends the relations of the parts of the great system to each other and to the whole, with the ability to organize, to collate, to condense, to accurately deduce the amount and value of the competitive business to each and to all, to separate what is valueless from what is not, with diplomacy, finesse enough to damage and control general freight and passenger agents, individually and collectively, firmness enough to coerce a president, etc.

It is apparent that the great difficulties are to be encountered and overcome in the inception and organization of such a scheme. When once working successfully it will be comparatively easy to find and train persons to manage its operations.

If the three great trunk lines can work together as one corporation in this matter, it does seem as though the man for the occasion might be found who, with the combined aid of the said lines, can accomplish the desired result. If the N. Y. C. & H. R. R. R., Erie and Penna. R. R. Cos. and their connection could be handled as one company, the pressure and influence that could be brought to bear on such companies as the Baltimore & Ohio and Grand Trunk would be great. Once be able to demonstrate to such parties that rates can be maintained by the first-named system of roads, and one powerful reason for their noncooperation is removed. The writer has for years encountered great difficulty in effecting any arrangement with a competing southern line for the adoption and maintenance of agreed rates, on account of the apparent inability of the trunk lines to keep faith and rates with each other.

The proposed organization should operate through the existing railroad organization; should not come in contact with the public and should be brought to public notice as little as possible. As it would have to collect and collate statistics and endeavor to divide business between competing roads equitably, it might properly be known as a "railroad clearing house."

I have roughly endeavored to indicate a possible plan whereby railroad property may be prevented from becoming worthless.

If something of the kind can not be done, it seems to me that railroad managers, in the interests of the owners of the property, must unite in petioning Congress to enact a law that will give the required protection. Before doing this they should decide upon the character of the law desirable and endeavor to shape the legislation accordingly.

A very serious objection to this mode of procedure will be found in the unstable character of the legislative and executive department of our Government.

Nearly every one connected with the business is ready with a remedy for existing evils which they expatiate upon verbally, those who know the least about the subject of course being the most sanguine.

As I have had the assurance to reduce my views to writing, I will have to be ranked with the last named class. Nevertheless, if others are influenced by my example to place their idea on the subject on paper, something may be gained.

As this communication was written on the road from New York to Louisville, nothing is lost if it is not read.

Very respectfully, M. H. Smith, *General Freight Agent.*

The other point of view, which I have always held and struggled to secure its adoption by competing and connecting transportation lines with which I have come in contact, is that all transportation lines are entitled to reasonable rates; rates that will pay a reasonable return on the capital invested. And I repeat that I have held such views from the time I was actively in charge of traffic matters, commencing in 1869.

The management of the Louisville & Nashville Railroad Co. has always endeavored to cultivate friendly relations with steamboat lines with which it comes in competition, or which operate in connection with it. We are still on good terms with the United States Mail Line operating between Louisville and Cincinnati, but there is very little traffic interchanged. The same is true of the line between Louisville and Evansville, but the competition of the rail lines confines the operation of that line and many others to the local traffic. Another line is operating between Evansville and Cairo, and another between Paducah, Cairo, and St. Louis, and landings on the Tennessee River. In the earlier days there was a very nice steamboat trade between Evansville and points on the Tennessee River, the line handling traffic in connection with other lines between Cincinnati and Louisville, etc. The Louisville & Nashville Railroad crosses the Tennessee River at Danville, Tenn., and its management wanted to participate in the traffic passing between Louisville, Cincinnati, and other points on and reached via its lines, and landings on the Tennessee River above Danville. The managers of the packet line were unwilling to do this, and the Louisville & Nashville Railroad Co. bought two boats, constructed a siding and incline which operated by steam power, provided a wharf boat and did compete. One of the boats was lost, and an agreement was finally entered into with the Evansville & Tennessee River Packet Co. whereby they bought the remaining boat and agreed to an adjustment of rates that permitted the Louisville & Nashville Railroad Co. to participate in the traffic; and that arrangement, made in 1872 or 1873, is still in effect.

Boats operating in the Cumberland River below Nashville have always been to a certain extent feeders; that is, they bring traffic to Nashville, some of which is shipped to points south by the L. & N. R. R. They are also, to a limited extent, competitors between Evansville and Nashville, and the Louisville & Nashville has for many years cooperated with what it deemed to be the established line, known for many years as the Ryman Line. Capt. T. G. Ryman, the owner of the boats, was an energetic and capable manager of river transportation, and when seasons were favorable (i. e., corps abundant) he did a profitable business. This would invite competition, and the Louisville & Nashville Railroad Co. would adhere to arrangements theretofore made, to interchange traffic on established terms with the Ryman Line. He at one time got into some financial difficulty and needed money, which I loaned him, taking a mortgage on his residence, which he afterwards paid. On the Upper Cumberland he had some interests, but more or less unimportant. The traffic is not sufficient to make the business very attractive. On the upper part of the river boats are operating in connection with the Cincinnati Southern Railway.

We have always maintained friendly relations with the owners and managers of boats in the Alabama River. There were usually a number of owners, and at times have had too many boats in operation, or a crop failure would render the business for a season unprofitable. No very persistent efforts were made to compete with the railroads for the transportation of property and persons between Mobile, Selma, Montgomery, and Demopolis, the adjustment of rates by rail lines, character of service, etc., considered, rendering such traffic undesirable to the owners of the boats; but occasionally an effort would be made to divert traffic from the rail lines, encouraged by shippers desirous of using the river transportation lines to force a reduction in the rates of the rail lines. A number of futile efforts have been made by combinations of shippers to so force a reduction in the rail rates. These efforts have not been confined to Montgomery or Selma. Chattanooga, Tenn., has in the past endeavored to accomplish this by subsidizing boats.

As I have said, the owners of boats operating in the Alabama River were friendly. The Louisville & Nashville Railroad Co. would exchange passes with the officers of some of the boats, which facilitated their visiting the shipyards at Jeffersonville, Ind., where some of the boats were constructed or repaired.

In 1906 or 1907 a man by the name of J. M. Dewberry, whom I have never met, but who I am told had been a school-teacher, appeared as a promoter and represented that he was going to build a railroad from Gadsden, Ala., through Birmingham and Bessemer to Tuscaloosa, Ala. Some years previous, what is called the Belt Line around and through the city of Tuscaloosa had been constructed, but it was unprofitable to the owners, and was repeatedly offered for sale to the railroads. Mr. Dewberry acquired the Belt road, and, according to information which I have received, bought from Capt. John Quill and T. H. Moore 3 boats, from Winston Jones 3 boats, from Dr. Tunstall 1 boat, but was unable to buy what was known as the Staples Line, consisting of the *James T. Staples*, *Mary S. Blees*, and *Mary E. Staples;* and the steamer *Lucille*, owned by Capt. W. M. Eanes and Capt. J. H. Hays, and the steamer *American*, owned by Henry Lindsey—five boats altogether that he did not acquire, in his efforts to secure all the boats and establish a monopoly. The boats he purchased were mainly paid for in bonds. He organized what was called the Birmingham & Gulf Railway & Navigation Co., issuing a mortgage covering the railroad from Gadsden to Tuscaloosa (which was never built, and I am not sure that it was ever surveyed), also covering the Belt Railroad at Tuscaloosa and the boats he had purchased. He managed in some way, probably through the sale of bonds, to interest Messrs. Morris & Co., bankers, of Philadelphia.

They inaugurated operations of their boat line on July 1, 1908. While I was in a way advised, through newspaper reports, I could not see how those outside people could operate boats successfully against people who had been raised on the river and knew their business thoroughly, and I therefore did not give the matter any consideration.

It seems that Capt. Staples, who was raised on the river (I think his father still lives at one of the landings somewhere on the river), had grown up in the boat business, and had just built a new boat costing about $40,000, called the *James T. Staples*. He was unwilling to sell his boats upon the terms proposed. I do not know, but I suspect that if they had offered cash they would have had no difficulty in acquiring them. He continued to compete for local traffic—did not run his boats to Montgomery, because the rates that were being secured, under the conditions then existing in the river, rendered it impossible to operate the boats profitably; but I believe he continued to seek his regular trade in competition with the other boats. Am not sure, but I believe he operated largely in the Tombigbee River.

In May, 1909 (nearly 11 months after the Birmingham & Gulf Railway & Navigation Co. had commenced operating boats), Capt. Staples sought an interview with me. I believe the first appointment was made through the traffic representative of the Louisville & Nashville Railroad Co. at Mobile. An appointment was made, and he brought a letter of introduction from Hon. Gregory L. Smith, district attorney, who was also his attorney. It was very brief, saying that he was an experienced river man, absolutely reliable, and I believe wound up by saying that he was a hustler. Capt. Staples advised that he was in financial difficulties, and wanted to borrow some money, and would give a mortgage on his boats, of considerable more value than the amount he wished to borrow.

Although he had been operating in the river for some years, it so happened that I had never met or heard of him, which, however, is not very significant, as I have not for some years been active in the traffic affairs of the company, although I knew Capt. John Quill for many years.

There was no special reason why I should have loaned him the money, except in pursuance of our policy that we have been practicing for nearly 50 years of assisting owners of boat-transportation lines who were doing a local business and who were conservative, or who desired to secure a reasonable return on their investment by transporting property at remunerative rates.

I loaned Capt. Staples $15,000, taking a mortgage on his interest in one of the boats. The transaction was made through a trust company at Mobile. Capt. Staples issued a note payable to his order, which he indorsed, and which was attached to the mortgage with the trust company as trustee; and he then drew on the National Park Bank of New York, that bank being reimbursed by the National Bank of Commerce here, and it in turn being reimbursed by the treasurer of the Louisville & Nashville Railroad Co. There was no special reason for handling it in that way, except that Capt. Staples didn't care to have the transaction known, and he gave me his address as Old Shell Road.

I do not now recall how long it was before he came back and wanted $20,000, and proposed to give a mortgage on his new boat, the *James T. Staples*. That was handled in the same way, with the trust company acting as trustee under the mortgage.

Mr. Connolly. Was that just an increase to $20,000, or was it an additional $20,000?

Mr. Smith. An additional $20,000, making a total of $35,000, with a mortgage on the new boat, which seemed to be ample security. He was bound under the mortgage to keep the boats insured.

Some time afterwards he came back again, and at that time offered to mortgage his interest on all three of the boats, which I think he estimated as being worth about $70,000, and I let him have $15,000 more, making a total of $50,000.

He made some small payments of interest, but did not seem to prosper. My opinion is that there were too many boats in the river for the traffic available. I think the traffic for some of the years was less than normal, due to partial failure of crops, etc. The Birmingham & Gulf Railway & Navigation Co. attempted to establish a monopoly on the Alabama, Tombigbee, and Warrior Rivers—that is, acquire all the boats, control the landings, etc., and they undertook to drive all the boats they did not control out of business—bankrupt them—an inexcusable and stupid proceeding, as Mr. Dewberry, who so far as I am advised, had no experience whatever in transportation, was the manager of the Birmingham & Gulf Railway & Navigation Co.

The following is a statement which has been prepared by one who, from his occupation, was and is familiar with all of the conditions that prevailed from the time the Birmingham & Gulf Railway & Navigation Co. acquired the boats until they went out of business, and until Capt. Staples sold one of his boats and afterwards turned the other boats over to an agent, and committed suicide, and the principal boat was destroyed by an explosion:

"Mobile, Ala., *June 12, 1913.*

"Memorandum in reference to the Birmingham & Gulf Railway & Navigation Co.

"The promoter of the above company was Mr. J. M. Dewberry, of Birmingham, Ala., who appeared in Mobile during the year 1908, stating that he had come here to put a line of boats on the Tombigbee River to run between Tuscaloosa and Mobile for the purpose of transporting coal to Mobile. He claimed that all arrangements had been made to get the coal and bring it to Mobile at a very low rate, that he had abundant capital, the money having all been arranged for in the North. His plans were soon changed to take in not only the handling of coal, but of all other freights, and to include the business of the Alabama River as well as of the Tombigbee and Warrior Rivers. Then, his plans took in a passenger business on these rivers, he claiming that he had found a great opening for an improved river-packet system; that he would arrange to run a daily boat on each river from Mobile, carrying freight and passengers; that to facilitate this he would secure the principal landings on both rivers and would stop his boats only at those landings, where he would build improved facilities for handling the freight from these boats. He made very great claims along these lines and used newspaper advertising freely.

"The impression was made in Mobile that the financiering of this concern was being done through the Carnegie Trust Co. of New York. A fine office was opened in Mobile with high-priced men in charge and a full corps of clerks for doing a great business, something that had never been done in Mobile before in connection with the river business. This office was in charge of Mr. Ultz, who came here, it was stated, from New York and who claimed to have been a schoolfellow of William Rockefeller's son. This man was to receive a salary of $10,000 a year, and it was stated that through him the Rockefellers' money was to be put into this line as might be needed.

"A Mr. Johnston of Birmingham, son of the present Senator from Alabama, was the general solicitor of the Birmingham & Gulf Railway & Navigation Co.

"In pursuance of their plan in getting a monopoly of the entire river business from Mobile, the company, under the direction of Mr. Dewberry, endeavored to buy all the river steamboats operating out of Mobile. They succeeded in buying the following boats: The steamer *Nettie Quill*, owned by Capt. John Quill; the steamer *John Quill*, owned by Capt. John Quill; the steamer *City of Mobile*, owned by Capt. John Quill and T. H. Moore; the steamer *W. J. Bethea*, owned by Winston Jones; the steamer *Hard Cash*, owned by Winston Jones; the steamer *Liberty*, owned by Winston Jones; the steamer *Ouachita*, owned by Dr. Tunstall.

"The most of the negotiations made for these boats were made with Capt. Quill, representing the owners. It was said that the steamers brought their full value, and settlements were made for them by Dewberry, part cash and part in bonds that his company had issued. These bonds covered all the property that the Birmingham & Gulf Railway & Navigation Co. owned, including not only the boats but a short railroad at Tuscaloosa.

"The parties who sold the boats here went north with their bonds and succeeded in disposing of them at a discount. It is said that these bonds were taken by a firm of bankers in Philadelphia—Messrs. Morris & Co.—who were interested with Dewberry in the promotion of this company. The Mobile steamboat man who had dealings with Messrs. Morris & Co. speak highly of them and say that they were deceived into going into this business; that they believed the statements that had been made to them, and that Morris & Co. found themselves out about $340,000 before they realized they had been deceived.

"In addition to the seven steamers bought and taken possession of by the Birmingham & Gulf Railway & Navigation Co., Dewberry made efforts to buy all the other steamers that were in Mobile. These were the *James T. Staples*, *Mary S. Blees*, and *Mary E. Staples*, known as the Staples Line; the steamer *Lucille*, owned by Capt. W. M. Eanes and Capt. J. M. Hays; and the steamer *American*, owned by Henry Lindsey, but for various reasons not necessary to go into here, these steamers, while their owners were willing to sell them, were not transferred, and they continued to run as competitors on the river to the Birmingham & Gulf Railway & Navigation Co.

"The methods of management of this company, their expensive office here, large salaries, and the like, caused the business people of Mobile, particularly those having to do with river transportation, to feel from the first that the company was doomed to failure, and it had no local credit in Mobile. It is said that every trip of each boat owned by the Birmingham & Gulf Railway & Navigation Co. made a loss. The people did not patronize these boats, and there was a steady falling behind in business, and Dewberry then employed Capt. John Quill, who had spent a lifetime on the river here, to take charge of his boats and endeavor to get business. Capt. Quill did this for a while but could not draw business. Many merchants and planters living up along the river refused to give these boats any business. One of the main causes of prejudice against them was the effort of Dewberry and his company to get control by lease or otherwise of all the important river landings on the Alabama and Tombigbee Rivers. Dewberry did not hesitate to state that he was going to do this and that for all freights that he would handle there would be no wharfage or landing charge made, but for any freights that were handled by other boats at his landings there would be charges, the parties paying for the use of the landings. The owners of plantations along the rivers, who had been in the habit (from the first river settlements) of having their own private landings on their own plantations, were very much opposed to the new system of landings that Dewberry attempted to inaugurate, and this one effort, perhaps, did more than any other one thing to make his line unpopular. The boats that were working in opposition did most of the business.

"(In addition to a very fine and expensive office in Mobile, the Birmingham & Gulf Railway & Navigation Co. had an office at 165 Broadway, New York City, and it is also stated that they had an office in Birmingham and one in Tuscaloosa, Ala.)

"After about two years' operation of this line from Mobile, always at a loss, the company gave up and its boats were tied up in Bayou Sara, a stream near Mobile. Then two of the boats were leased—one to Capt. Quill, the other to another party in Mobile. The other boats have remained in Bayou Sara, where they were rapidly deteriorating and going to ruin. Messrs. Morris & Co., above mentioned, whom it seems were practically the only creditors of the Birmingham & Gulf Railway & Navigation Co., took possession of the company, discharged Dewberry, and have recently sold to Capt. Quill at a very low price, it is said, all the boats, and Capt. Quill now has these boats for sale, trying to get rid of them. Messrs. Morris & Co. have left of the wrecked property, it is said, a short line of railroad at Tuscaloosa, which they are now operating in some way under the name of the Tidewater Development Co. (operating the Tuscaloosa Belt Railway), and they claim that they are out in this venture the sum of $340,000.

"The last heard of Dewberry was that he was connected with a scheme to develop Dauphin Island, which seems to have failed also."

That is the end of that statement. I will file a copy of the foregoing statement.

After the Birmingham & Gulf Railway & Navigation Co. suspended, Montgomery merchants furnished capital to acquire boats and barges to be operated between Montgomery and Mobile, with the avowed purpose of forcing the railways to reduce rates. They operated for a time, but finally suspended, probably at a total loss of the capital invested. So far as I know, they did not materially interfere with the traffic which Capt. Staples was seeking. I do not think they made any serious effort to handle traffic to and from local landings.

I received two more visits from Capt. Staples, at which he asked for financial assistance. He had in the meantime sold one of the boats, and I believe applied all of the proceeds except what was necessary to pay prior liens, to the indebtedness to the Louisville & Nashville Railroad Co. The last time he came to see me I saw that he was greatly depressed. I sympathized with him, but I do not think I comprehended his difficulties, and I told him that it was very embarrassing to loan him money to operate; that it certainly seemed as if he should be able to earn operating expenses; that we were not pressing him, and had no intention of foreclosing, and he finally left, saying he would see if he could not obtain some assistance from banks at Mobile, with the assurance that the liens on his boats would not be foreclosed.

Not long afterwards I was advised by wire that he had committed suicide, and that before doing so he had placed his boats and other property in the hands of an agent.

One week afterwards, the most valuable boat, the *James T. Staples*, was destroyed by an explosion and a number of lives were lost; and it transpired that the insurance had lapsed. Had the insurance been kept up as per the mortgage agreement, the loss to the L. & N. would have been very little, perhaps nothing at all.

Mr. Connolly. Whose fault would that be?

Mr. Smith. I do not know. I see you have stated that the explosion occurred on the same date that he committed suicide.

Mr. Connolly. No; a week later. It was shortly after he was buried. He committed suicide on the day his boats were sold.

Mr. Smith. The boats were never sold. He transferred them to West. The mortgage to secure the loan by the Louisville & Nashville Railroad Co. was never foreclosed.

Mr. Connolly. He turned them over to Gregory L. Smith, acting as trustee.

Mr. Smith. Mr. Smith had nothing to do with the matter except as legal adviser.

Mr. Connolly. Weren't there two Gregory L. Smiths down there? I have a photograph of his signature where he accepted a trust which he signed; he may have signed it as an attorney.

Mr. Smith. That may have been something that occurred after his death—the sale of the remaining interest in the *Mary S. Blees*, and a nominal sum for the hull of the *James T. Staples*, which was put up and sold. Those are mere legal proceedings, which I know nothing about.

Mr. Connolly. This disposition of his boats was voluntary on his part—wasn't forced by you?

Mr. Smith. The disposition of his boats and other property, if he had any, to Mr. West was voluntary, or at least was not caused by any action taken by the trustee of the mortgage, so far as I am advised.

Mr. Connolly. I mean when Staples made this transfer of these boats, or whatever he had, that was voluntary on his part altogether?

Mr. Smith. I know nothing whatever about it.

Mr. Connolly. But you know that you didn't force him to sell.

Mr. Smith. We did not take any steps to foreclose, and I had told him that we would not. I now think that I made a mistake. When he came to me and wanted money, if I had told him that he was bankrupt and that we would foreclose and at the sale purchase the boats under the terms of the mortgage and place them under his management and give him an opportunity to repay, and if he did so to again place him in control of his boats, it might have resulted in relieving him of his great trouble and might have been the means of preventing his sad ending and probably the destruction of the *James T. Staples*. I have never been advised as to why and how the insurance policies were canceled and have never known what disposition he made of the money loaned to him, but have always assumed that he applied it to the payment of his debts.

Mr. CONNOLLY. I was going to ask you what he did with all that money.

Mr. SMITH. I do not know, and I do not know why the insurance policies were allowed to lapse. Had the *James T. Staples* been fully insured the loss would have been nominal.

Mr. CONNOLLY. It seems to me that it was an oversight on the part of West or Smith down there.

Mr. SMITH. I do not know who was to blame. After Capt. Staples had taken his life, what could be done?

Mr. CONNOLLY. Was there any idea or any conclusion about whether the boat blew up or whether it was blown up?

Mr. SMITH. None that I know of. There were some reports in the newspapers that it had been blown up with dynamite or something that had been placed in the wood, but I have no other information about it; have not followed it up, but have accepted our loss, the loss being due to the fact that the security was destroyed when the insurance policies lapsed. Somebody did us a great wrong.

Mr. CONNOLLY. They were just lapsed, weren't they? They weren't canceled?

Mr. SMITH. I think they were canceled, but I do not know.

The money is lost, and I have not deemed it worth while to make any investigations or inquiries. I made the loan because Capt. Staples seemed to be an honest fellow and in pursuance of the policy we had followed for many years. He had grown up in the business and was entitled to run his boats if he could, and I let him have the money as I thought the security was ample. Didn't loan over 75 or 80 per cent of the alleged value of the three boats, and it seemed to be a pretty safe transaction. He agreed to pay 6 per cent interest, which was too much, but he was willing to pay it to get us to help him out.

Here is a letter from the Department of Justice. Some people at Mobile, trying to stir up mischief, have called upon the Department of Justice to prosecute and upon the Interstate Commerce Commission to investigate, and I believe some appeals have been made to other authorities. The following letter was received from the Assistant to the Attorney General, dated Washington, D. C., May 31, 1913:

"A complaint has been lodged with the Department of Justice to the effect that in 1909 and 1910 the Birmingham & Gulf Navigation & Railway Co., which was operating a line of steamers between Montgomery and Mobile, Ala., was put out of business by unfair competition conducted by and through one Norman H. Staples, who operated a competing line of steamers between said points. Certain information has been obtained which strongly indicates that Staples was financed by and was probably operating at the instance of Milton H. Smith, president of the Louisville & Nashville Railroad Co.

"If there be any facts connected with this matter which are not now in the possession of the department, we would be willing to have same communicated to us.

"I write you by direction of the Attorney General."

Under date of June 6, 1913, I replied as follows:

"Your favor of the 31st ultimo to Col. H. L. Stone, general counsel, received in his office on the 4th instant, has been by him referred to me.

"You say, 'If there be any facts connected with this matter which are not now in the possession of the department, we would be willing to have same communicated to us.'

"Please advise me what facts are in possession of the department."

Have not heard anything more.

Mr. CONNOLLY. A rather remarkable letter. How would you know what facts the department had?

Mr. SMITH. You must see the absurdity of the proceedings. Capt. Staples had been on the river from a boy, and the Birmingham & Gulf Railway & Navigation Co. undertook to drive him out—make him sell them his boats. Now we are accused of the crime of financing Staples to enable him to destroy the Birmingham & Gulf Railway & Navigation Co. when they were trying to destroy him. It is the old story of the wolf and the lamb. It is so absurd that I have never given it any thought or attention. Your statement that it was reported that Capt. Staples thought he had committed some crime is absurd. He had committed no crime.

Mr. CONNOLLY. He seems to have been very impressionable about that time, according to the stories down there. Somebody made him believe that he had done wrong.

Mr. SMITH. If he believed that, he was out of his mind. He seemed to be a very sensible man.

Mr. CONNOLLY. Probably wasn't a very good business man.

Mr. SMITH. Well, he was supposed to be a pretty good steamboat man; knew how to operate boats economically. He tried very hard to sell his steamers, and called on me to help him, and I put him in communication with our friends on the river at various points; but the boats were not what they wanted, and he never succeeded in selling.

Mr. CONNOLLY. Fifty thousand dollars—now, wouldn't it take him some time to make that money back on three boats, or would it?

Mr. SMITH. It would take him a long time, running the boats at a loss.

Mr. CONNOLLY. But in ordinary, prosperous seasons?

Mr. SMITH. Well, he didn't have any good reasons. He did make money one year, but that was before he built his new boat. There were too many boats for the business; they couldn't all live, and some had to lay up. I think they tried to arrange with each other to run their boats part of the time. Now the boats are practically out of the river—only two or three left—and they will probably make some money. River boats are built light and deteriorate rapidly—are precarious property. I had that in mind when I made the loan, but the *James T. Staples* was a new boat. It was an unfortunate affair. I never knew what he did with the money loaned him or how deeply he was in debt when he came here.

Mr. CONNOLLY. He wasn't a gambler, was he?

Mr. SMITH. No. My impression of him was that he was a good man and a good citizen. I never met him except in this office, and I suppose I must have met him about five times. I made him three loans, and I think he was here twice afterwards.

Now, I think that is all the information that I can give relative to the Staples transaction, as to which you have questioned me.

My recollection is that an agent of the Interstate Commerce Commission, or an examiner, was down in Montgomery; at least, I believe, at Mobile, investigating the matter of our relations with boats in the river. After this transaction, as I have stated, the merchants of Montgomery undertook, or our friends undertook, to induce the Louisville & Nashville Railroad to reduce rates to and from Montgomery by putting in a boat and barges plying between Montgomery and Mobile, and after losing some money they went out of business. A representative of the commission was trying to get information that we had acted unfairly toward them, and we did act unfairly to the extent of ignoring the competition, and the object, therefore, of putting on the boat and barges was defeated, the object being to force down the rail rates.

Mr. FOLK. And the purpose of this loan of $50,000 to Capt. Staples was to have his line of boats to compete with the Birmingham & Gulf Railroad & Navigation Co.?

Mr. SMITH. I do not think they paid any attention to the Birmingham & Gulf Railroad & Gulf Navigation Co. Capt. Staples plied the Alabama and Tombigbee Rivers. The Birmingham & Gulf Railroad & Navigation Co. went out of business very soon after this first loan was made. It had been in operation 11 months before Capt. Staples came to me.

Mr. FOLK. He was operating on the Tombigbee River before this loan, was he not?

Mr. SMITH. The Alabama and Tombigbee Rivers; yes.

Mr. FOLK. And after the loan, did he not operate on the Alabama River?

Mr. **Smith.** The Alabama and Tombigbee Rivers. The Alabama is a branch of the Tombigbee River. The Alabama River extends to Selma and Montgomery, and the Tombigbee and Warrior up to Tuscaloosa.

Mr. **Folk.** Before this loan Capt. Staples was operating on the Tombigbee and Alabama Rivers?

Mr. **Smith.** Yes.

Mr. **Folk.** After the loan he operated exclusively on the Alabama River.

Mr. **Smith.** No.

Mr. **Folk.** Didn't he?

Mr. **Smith.** He never operated on the Alabama River, so far as I know.

Mr. **Folk.** How did the Louisville & Nashville Railroad prevent the Merchants' Barge Line from docking at the Mobile & Ohio and Southern piers at Mobile?

Mr. **Smith.** They didn't do it.

Mr. **Folk.** They didn't do it?

Mr. **Smith.** No; that is a fiction.

Mr. **Folk.** What do you know of the Merchants' Barge Line?

Mr. **Smith.** I don't know. Was that the line that operated for a time between Montgomery and Mobile; is that what it was called?

Mr. **Folk.** That is correct.

Mr. **Smith.** I don't know.

Mr. **Folk.** It appears that the docking privilege of the steamer *Liberty* at the Mobile & Ohio and Southern piers and the Montgomery steamship pier, was withdrawn. Do you know why?

Mr. **Smith.** No. We had nothing to do with it.

Mr. **Folk.** Has the Louisville & Nashville Railroad any boat line competition on the Alabama River to-day?

Mr. **Smith.** Yes.

Mr. **Folk.** What?

Mr. **Smith.** I don't know the details of it. I know boats are running between Mobile and Selma and Montgomery, with the same object in view always to break down the railway rates between those points, and boats are also running in Warrior River on facilities created by the United States Government, which has expended something like twelve or fifteen million dollars for constructing locks and dams on those rivers, giving facilities for the operation of boats on those rivers every day in the year, instead of as formerly, when there was no movement of boats between drought periods.

Mr. **Folk.** You are not backing any boat line on the Alabama River to-day, are you?

Mr. **Smith.** No.

Mr. **Folk.** Have you any loans out to any boat line on the Alabama River?

Mr. **Smith.** Not that I know of; no.

Mr. **Folk.** Or the Cumberland River? You spoke of a conference with Mr. Isaac T. Rhea.

Mr. **Smith.** You spoke of it; I did not.

Mr. **Folk.** Don't you recall that?

Mr. **Smith.** No; I think that is about 30-odd years ago.

Mr. Folk. At the office of J. W. Thomas, president of the N., C. & St. L. in Chattanooga, there being present yourself, Mr. J. T. Harahan, Mr. Thomas, and Mr. Stallman. Do you recall that?

Mr. Smith. No; I do not go back thirty-odd years.

Mr. Folk. Does the Louisville & Nashville road refuse to the Nashville Packet Co., a competitor of the Ryman Line, participation in joint through rates?

Mr. Smith. I do not know, but I presume they did. They were working, in that statement I have read——

Mr. Folk. Now, at this time?

Mr. Smith. Now?

Mr. Folk. Yes.

Mr. Smith. Oh, I do not know what lines are working on the Cumberland River. I don't know anything about that. Ryman's are entirely out of the business, and I did not know there was a line operating as the Ryman Line now.

Mr. Folk. How about the Nashville Packet Co.; that is not out of business, is it?

Mr. Smith. I do not know anything about a boat line operating in the Cumberland River now, certainly. I do not know who they are owned by or how they are designated.

Mr. Folk. Mr. Smith, you gave as your reason yesterday for excluding the Tennessee Central from the Nashville terminals, that the terminals are for the owning line. That being the case, can you tell us why the N., C. & St. L. turned over its Nashville terminals to the Louisville & Nashville Railroad?

Mr. Smith. It did not do it. It was a joint arrangement whereby the properties and terminals of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway were used in creating a comprehensive system of terminals. It was found that it required a large amount of additional property, and there was created a large and very commodious facility, as we thought, for handling our interchange traffic and the traffic of the city of Nashville, but finally those facilities were outgrown and it was our endeavor to create an outside yard to add to such facilities, at a very large expense.

Mr. Folk. Did the Louisville & Nashville Railroad acquire terminals at Atlanta when it secured control of the Atlanta & West Point?

Mr. Smith. No.

Mr. Folk. It did not?

Mr. Smith. Exclusive control of the Atlanta & West Point?

Mr. Folk. When it secured control of the Atlanta & West Point.

Mr. Smith. When it secured——

Mr. Folk. Yes; when it secured control of the Atlanta & West Point.

Mr. Smith. We never have secured the control of the Atlanta & West Point.

Mr. Folk. It has not been secured yet?

Mr. Smith. No. The Louisville & Nashville Railroad, as joint lessee of the Georgia Railroad, has leased from the Georgia Railroad & Banking Co. stock it owned in the Atlanta & West Point Railroad, but that was not a majority, and the Louisville & Nashville Railroad would only have a joint interest with the Atlantic Coast Line in that stock, which it had at very great expense to the Louisville & Nashville Railroad, because the Louisville & Nashville Railroad furnished the capital in order that these terminal facilities in Atlanta should be reconstructed and rearranged and added to the terminal facilities on the Georgia property and adjacent property, and the Louisville & Nashville Railroad on its own property created terminal facilities in the western part of the city, which it is now seeking to connect with its main line north of Cartersville. I think it has expended in that way several million dollars.

Mr. FOLK. Does the Nashville, Chattanooga & St. Louis Railway use the terminals at Atlanta in connection with the Louisville & Nashville Railroad?

Mr. SMITH. The Nashville, Chattanooga & St. Louis Railroad uses the terminals of the Western Atlantic Railway.

Mr. FOLK. And the Louisville & Nashville Railroad does not?

Mr. SMITH. No. They are inadequate. Well, let me say——

Mr. FOLK. I beg your pardon; go ahead.

Mr. SMITH. We have, with other roads, jointly used the passenger station, which, I think, is on the property of the Louisville & Nashville Railroad, but I am not sure. There may be some of it on other roads, but I think not. We use, with the Nashville, Chattanooga & St. Louis and the Georgia Railroad, the old passenger station in Atlanta, which is inadequate, but we do not use any part of the freight facilities of the Nashville, Chattanooga & St. Louis Railway or the W. & A. Railroad in Atlanta.

Mr. FOLK. In speaking of the Tennessee Central yesterday, you said you wanted to build a line from Harriman to Nashville, yourself. Can you tell us——

Mr. SMITH. That is an old matter. The Nashville & Chattanooga road had a branch from Nashville to Lebanon, about 30 miles directly east. What is known as the Crawford road had been constructed from Lebanon, connecting with that branch to a place up on a point of the Cumberland Mountains, I think, known as Standing Stone or some such name as that. The Southern Railroad had acquired a road from Knoxville to Harriman, near where it connects or crosses the Cincinnati Southern road, operated by the C., N. O. & T. P. Railway, leaving a gap of perhaps 40 miles, or maybe more, between the end of the Southern Railway, practically at or near Harriman and the end of the Crawford road. At that time we were considering what would be done with these derelict roads scattered about the country. It would seem that that line ought to be completed, and there was a suggestion at least that the Louisville & Nashville Railroad would endeavor to acquire the Crawford road and extend it over to Harriman, and then with the Southern Railway form a through line between Nashville and Knoxville. On the map it looks as though that road ought to be completed in the interest of the State. It would make a shorter line between Nashville and Knoxville than the line via Chattanooga. Here were these derelicts. Some work had been done on the line, I think, between Standing Stone and Harriman. At any rate there was an understanding that we would try to complete that line, and that, of course, was abandoned. It is my opinion that if that road is operated at all successfully it must be done by the Southern Railway. I doubt whether it is doing much more than earning its operating expenses now. On the other end, from Hopkinsville to Nashville, it can only be operated, I think, successfully, by the Illinois Central Railroad.

Mr. **Folk.** Do you believe that by building this road yourself you could have used it to better advantage as part of the Louisville & Nashville system than as a connection of the Nashville, Chattanooga & St. Louis Railway?

Mr. **Smith.** Well, it would have been the Nashville, Chattanooga & St. Louis Railway. If we had acquired it, it would have been for the Nashville, Chattanooga & St. Louis Railway.

Mr. **Folk.** It would have been acquired for the Nashville, Chattanooga & St. Louis Railway?

Mr. **Smith.** Yes; certainly.

Mr. **Folk.** It would only have been a part of the Louisville & Nashville Railroad system as a part of the Nashville, Chattanooga & St. Louis Railway.

Mr. **Smith.** Yes. The Louisville & Nashville Railroad could not operate it.

Mr. **Folk.** You stated yesterday that the modification of the routing contract between the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad in 1906 was due to the opening of the new line of the Louisville & Nashville Railroad. When conditions develop which cause the interests of the Louisville & Nashville and its controlled companies to diverge, who decides what action shall be taken as between the conflicting interests?

Mr. **Smith.** Well, the opening of that line rendered it something like 110 or 115 miles shorter, a more direct line; and in pursuance to the policy adopted in 1872 as to division of territory, the business offering to this short line, tributary to the short line, was diverted to that line. Now, the business from Louisville, while to Atlanta over its own rails it is slightly shorter than the distance via Nashville, the traffic from Louisville still goes via Nashville. Instead of going over the Louisville & Nashville Railroad all the way, it is taken to Nashville and taken over the Nashville, Chattanooga & St. Louis road. Keep in mind that the Louisville & Nashville Railroad owns a considerable majority of the stock of the Nashville, Chattanooga & St. Louis Railway, and is therefore interested, as a stockholder, in the successful operation of that road, and we are not trying to inaugurate any policy to injure our own property. Yet the Nashville, Chattanooga & St. Louis Railway makes a profit; we participate in that profit, and why should we—what inducement is there for us to try to destroy the Nashville, Chattanooga & St. Louis Railway?

Mr. **Folk.** Now, when the interests of the Nashville, Chattanooga & St. Louis Railway conflict with the interests of the Louisville & Nashville Railroad, who decides as between the conflicting interests?

Mr. **Smith.** The management of the two roads. They will have to agree upon some kind of compromise, probably, if they do conflict.

Mr. **Folk.** The Louisville & Nashville Railroad, as the owning road, would naturally be the dominant factor, would it not?

Mr. **Smith.** Well, if we are the dominant factor, we have to look out for our interests in the Nashville, Chattanooga & St. Louis Railway. That is the reason we have to do it, because we are so largely interested in it, owning about 71 or 72 per cent of the stock.

Mr. **Folk**. The Nashville, Chattanooga & St. Louis Railway permitted the Louisville & Nashville Railroad to use the leased tracks of the Western & Atlantic from Cartersville to Atlanta.

Mr. **Smith**. Cartersville and Marietta. We have two connecting lines, one at Marietta and one at Cartersville.

Mr. **Folk**. Who arranged this trackage contract?

Mr. **Smith**. That is arranged between the officers of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway.

Mr. **Folk**. Was not that done in your office, as president of the Louisville & Nashville Railroad?

Mr. **Smith**. No, sir; I do not think it was. That is a matter that would be handled by correspondence in those days. I do not think it could be now.

Mr. **Folk**. In a letter from the secretary of the Louisville & Nashville Railroad to B. M. Starks, the last paragraph reads——

Mr. **Stone**. What is the date?

Mr. **Folk**. Dated April 17, 1906.

Mr. **Jouett**. Let me examine the letter, Governor. Just let me look at it. Then you can ask him about it.

Mr. **Folk**. The last paragraph reads:

> It may be well for me to add for your information that the contracts were both prepared by the president, or in his office.

Was this statement correct?

Mr. **Smith**. I think it is immaterial. I don't know whether the statement is correct, but I say it is immaterial who prepared the contracts. Such contracts are first negotiated verbally and then a memorandum, or whatever may have been made of such negotiation, is turned over to some one, probably the general counsel, or his office, to prepare the contracts in accordance with the understanding reached. It has to be prepared in somebody's office.

Mr. **Folk**. You do not recall whether it was prepared in your office or not?

Mr. **Smith**. No; I do not. It was probably prepared in the office of general counsel. Well, that letter says it was prepared in the office of the president of the Louisville & Nashville Railroad.

Mr. **Folk**. Did the Louisville & Nashville Railroad ever purchase any bonds of the Duck Valley Narrow Gauge Railroad, do you know?

Mr. **Smith**. What is that railroad, where is it, and when was it?

Mr. **Folk**. If you do not recall, we will not go into it any further.

Mr. **Jouett**. Give him the date of it.

Mr. **Smith**. Unless it was a narrow-gauge road or a road extending from Columbia, Tenn.——

Mr. **Folk**. Columbia to Fayetteville, Tenn.

Mr. **Jouett**. Wait; he is trying to get the date for you.

Mr. **Smith**. It was forty-odd years ago. I do not know whether we ever bought any bonds or not. I would not think it would be of very much value. I recall that the Louisville & Nashville Railroad assisted in the construction of the road by selling it the rails for laying the track. It was built by a local company and afterwards acquired by the Nashville, Chattanooga & St. Louis Railway, but it must have been forty-odd years ago.

Mr. FOLK. Now, Mr. Smith, speaking of the Frankfort & Cincinnati Railway, that the Louisville & Nashville Railroad was ordered to dispose of by the court and which was sold to Charles E. Hoge, I will ask you whether or not Hoge gave the Louisville & Nashville Railroad an option? He first gave his notes for the purchase price, secured by the stock in the road; then he gave the Louisville & Nashville Railroad an option to buy back the stock at cost at any time prior to July 1, 1922, provided the laws of Kentucky were amended to permit, to sell his stock to any person that the Louisville & Nashville Railroad might designate; is that correct?

Mr. SMITH. I do not know anything about that transaction. I know we acquired the road and we were required to sell it and did sell it. That is about all I know personally of the matter.

Mr. FOLK. Who conducted the negotiations for the sale of the Frankfort & Cincinnati Railway?

Mr. SMITH. I think, mainly, Col. H. L. Stone, general counsel. It was a legal matter.

Mr. FOLK. Can you tell us why the Louisville & Nashville Railroad acquired control of the Louisville, Henderson & St. Louis Railway?

Mr. SMITH. Why we acquired control?

Mr. FOLK. Yes, sir.

Mr. SMITH. It is a part of our through line between Louisville and St. Louis.

Mr. FOLK. In order to get through a line to St. Louis?

Mr. SMITH. We always had it, and had been operating over it. It had no terminals at either end. It used the Louisville & Nashville terminals at Louisville and the terminals and bridge at Evansville. It could not get into Evansville except over the tracks of the Louisville & Nashville Railroad.

Mr. FOLK. This road runs between Louisville and Evansville?

Mr. SMITH. No; it only runs between a point on the Louisville & Nashville Railroad near Louisville, to Henderson. It has to use the tracks of the Louisville & Nashville Railroad to Evansville, something like 12 miles, including the bridge across the river.

Mr. FOLK. The Louisville & Nashville Railroad can reach Evansville over its own lines, without using the Louisville, Henderson & St. Louis?

Mr. SMITH. Yes; but that would not form a line between Louisville and St. Louis. It would do very well for a line between Nashville and St. Louis. The line over the Louisville & Nashville rails between St. Louis and Louisville, via Guthrie, would have to go around a long triangle, and nobody would attempt to handle traffic that way.

Mr. FOLK. Mr. Smith, you have spoken of investments by the Louisville & Nashville Railroad in Alabama warrants and loans by the Louisville & Nashville Railroad to boat owners. Can you tell what other enterprises the Louisville & Nashville Railroad has investments in?

Mr. SMITH. What kind of enterprises?

Mr. FOLK. Hotels?

Mr. Smith. Hotels? No; I do not think we have any interest in hotels.

Mr. Folk. Mines?

Mr. Smith. We are very frequently solicited to aid in the construction of hotels to produce tourists' travel, etc.

Mr. Folk. Coal mines?

Mr. Smith. No; we have no interest in coal mines.

Mr. Folk. Banks?

Mr. Smith. No; not that I know of.

Mr. Folk. Manufacturing plants?

Mr. Smith. Yes; I think we have. Oh, coal mines, yes. I beg your pardon. (After examination of the annual report.) We seem to have bonds of the National Coal & Iron Co., amounting to $53,000. We have bonds of the Sloss Iron & Steel Co., $43,000. We have 5 per cent bonds of the Wholesale Merchants Warehouse Co., $398,000. We have, in Muhlenberg County 5 per cent refunding gold bonds, $10,000. We have stock in the Colossal Cavern Co., $25,000. I have the impression that we have an interest in a cotton mill on the South & North Alabama Railroad. We did make a loan to a cotton-mill company, the Buck Creek Cotton Mills preferred, $30,000; Gulf State Steel common, $53,447.44; Gulf State Steel Co. first preferred, $17,601.16; Gulf Steel Co. second preferred, $44,665.11; Kentucky Public Elevator Co. common, $37,300; Republic Iron & Steel Co. preferred, $54,800; Republic Iron & Steel Co. common, $46,100.

Mr. Stone. Do you want a full list of them, Governor?

Mr. Folk. He has finished with it.

Mr. Smith. You will find the rest of the securities owned on pages 28, 29, and 30 of the annual report of the Louisville & Nashville Railroad.

Chairman Meyer. For what year, please?

Mr. Stone. The last fiscal year, you mean?

Mr. Smith. Fiscal year ended June 30, 1915.

Mr. Folk. You speak of owning $398,000 worth of bonds of the Wholesale Merchants' Warehouse Co.

Mr. Smith. Yes.

Mr. Folk. What is the Wholesale Merchants' Warehouse Co.? Was it not organized by officials of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. Smith. We have an interest in the securities of a warehouse company in Nashville, and we have an interest in a somewhat similar concern bearing the name of a firm, however, in Memphis. There is only one of them here.

Mr. Folk. This is the Nashville that we are speaking of.

Mr. Smith. Well, we have $398,000 in that.

Mr. Folk. Do you know whether or not the Wholesale Merchants' Warehouse Co. of Nashville was organized by the officials of the Nashville, Chattanooga & St. Louis Railway?

Mr. Smith. No; not by the officials of the Nashville, Chattanooga & St. Louis Railway, but I think some of the subordinates of the Nashville & Chattanooga Railway, who had an interest in the stock. I have an impression that they sold it.

Mr. Folk. Can you tell us whether or not the Louisville & Nashville Railroad purchased $398,000 of bonds of the Wholesale Merchants' Warehouse Co. of Nashville in order to secure traffic of tenants located on the Tennessee Central Railway?

Mr. SMITH. No.

Mr. FOLK. Do you know why the Louisville & Nashville Railroad invested $398,000 in bonds of the Wholesale Merchants' Warehouse Co. of Nashville?

Mr. SMITH. We did it because it added practically to our terminal facilities. It furnishes warehouse facilities for traffic and tends to control traffic. It is to the interest of the people who occupy those warehouses to ship their property by the lines that use those facilities, and now it is proposed to turn these facilities over to the Tennessee Central.

Mr. FOLK. So you say that by buying $398,000 of bonds of the Wholesale Merchants' Warehouse Co. it tended to control the traffic?

Mr. SMITH. It tends that way. It makes to the interest of the people who occupy those warehouses.

Mr. FOLK. To give their traffic to the Louisville & Nashville Railroad?

Mr. SMITH. To give their traffic to the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway, that have access to those warehouses.

Mr. FOLK. And to prevent their traffic from going to the Tennessee Central, of course?

Mr. SMITH. Oh, well, if it can be shipped by the Louisville & Nashville it can not be shipped by the Tennessee Central.

Mr. FOLK. Mr. Smith, during the year 1913, under the records in this case, the Louisville & Nashville issued to public officials, and at the request of public officials, free passes to the number of 6,382, representing transportation of a value of $61,727.59, and in the same year, 1913, the Nashville, Chattanooga & St. Louis Railway, the majority of the stock of which is owned by the Louisville & Nashville Railroad, issued to public officials, or at the request of public officials, 16,580 passes, representing transportation of a value of $164,524.81. Do you approve of this practice of issuing free passes?

Senator LEA. Now, may it please the commission, this is the first question that has been asked upon the subject in regard to which I am a petitioner, and I did not know that this investigation at this time was going to take this scope of investigation in Washington, from the terms of the adjournment. It is very evident that Mr. Smith will be on the stand again at some other time, and I would ask that this phase of the case be passed over until I have had an opportunity to be represented by counsel, so that they can form the basis of the cross-examination which they may deem fit to make.

Mr. STONE. We do not object to that course.

Mr. FOLK. You prefer to wait?

Senator LEA. Yes.

Mr. FOLK. I will not insist on it.

Chairman MEYER. It seems to me that we will be pretty fully occupied for the rest of this day and to-morrow, anyhow.

Mr. FOLK. Very well. We will pass that over until the next time that Mr. Smith goes on the stand. I have some questions to ask him for the purposes of the record, which will probably be objected to.

Mr. Smith, have you had consultations——

Mr. JOUETT. Do you mean now?

Mr. FOLK. Yes.

You had consultations from time to time with your directors as to the policy of using corporate funds for political purposes?

Mr. JOUETT. We object to that question for the reason heretofore stated, and give the same advice to the witness.

Chairman MEYER. The witness is instructed to answer.

Mr. SMITH. By advice of counsel, I refuse to answer.

Mr. FOLK. Did you personally favor such expenditures, or were you ordered to make them by your directors?

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I decline to answer, by advice of counsel.

Mr. FOLK. Have you ever been present at any conference of railroad managers where the policy of political contributions was discussed?

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. FOLK. If you personally favor such contributions of corporate funds, do you favor making them to a party you yourself oppose?

Mr. JOUETT. I make the same objection and give the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. On the advice of counsel, I refuse to answer.

Mr. FOLK. Do you favor them when made to a party the large portion of your stockholders oppose?

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. FOLK. Do you justify taking funds partly owned by Republicans to help Democrats, or vice versa?

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. FOLK. Do the practical results of such contributions justify them as beneficial to the Louisville & Nashville Railroad Co., in your opinion.

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. FOLK. Are political contributions made by the Louisville & Nashville Railroad because, like the issuance of free passes, they are customary?

Mr. JOUETT. The same objection and the same advice.

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. FOLK. Has the Louisville & Nashville any political preferences as a general line of policy or has it made these contributions to Republicans in Republican districts and to Democrats in Democratic districts?

Mr. JOUETT. The same objection and the same advice?

Chairman MEYER. The same ruling.

Mr. SMITH. I refuse to answer, on advice of counsel.

Mr. **Folk.** Can you tell us where the limit is to be drawn as to the amount of funds of the Louisville & Nashville Railroad which may be diverted from railroad purposes to campaign purposes?

Mr. **Jouett.** The same objection and the same advice.

Chairman **Meyer.** The same ruling.

Mr. **Smith.** I refuse to answer, on advice of counsel.

Mr. **Folk.** If the board of directors of the Louisville & Nashville Railroad does not act on such matters, do you believe that managing officials have a discretion to fix the amount which may be so diverted?

Mr. **Jouett.** The same objection and the same advice.

Chairman **Meyer.** The same ruling.

Mr. **Smith.** I refuse to answer, on advice of counsel.

Mr. **Folk.** If these campaign expenditures are secret and not disclosed by the books and not reported to either stockholders or directors, how may the real parties in interest know whether a reasonable limit in expending the funds of the Louisville & Nashville Railroad for campaign purposes has been exceeded?

Mr. **Jouett.** The same objection and the same advice.

Chairman **Meyer.** The same ruling.

Mr. **Smith.** I refuse to answer.

Mr. **Folk.** I will ask you, Mr. Smith, if the safest rule in reference to the use of Louisville & Nashville funds for campaign purposes is one that makes any corporation official responsible, as for embezzlement, who secretly uses corporate funds for campaign purposes?

Mr. **Jouett.** The same objection and the same advice.

Chairman **Meyer.** The same ruling.

Mr. **Smith.** I refuse to answer.

Mr. **Folk.** That is all for the present.

Mr. **Jouett.** I do not think we ought to begin cross-examination now.

Mr. **Folk.** I do not think it would take very long, and we can get through with it to-night.

Mr. **Jouett.** We have had two days of this here.

Mr. **Folk.** He is going to be on the stand again.

Mr. **Jouett.** Well, I know, but you have had your say, and it is now 5 o'clock.

Mr. **Folk.** We have got to go to court——

Mr. **Stone.** You are not objecting to our going ahead, are you?

Mr. **Folk.** I want you to go ahead. I think we ought to finish now.

Mr. **Jouett.** I think if we can have a 15-minute conference to determine some matters we might be able to so shorten it as to get through this evening. I do not know that we can. You see we have been here two days now, and there are certain matters that we are bound to cover in this cross-examination.

Chairman **Meyer.** Well, if you are willing to defer the full cross-examination to a later hearing that is entirely satisfactory to me.

Mr. **Folk.** Entirely so.

Mr. **Jouett.** I know, but we may have some things that we wish to offer now while Mr. Smith is here and everything is fresh in our minds, so that he may not go on the stand again——

Mr. **Folk.** He is going on the stand again.

Mr. **Jouett.** When?

Mr. **Folk.** When the court rules on these questions that he has refused to answer.

Mr. **Jouett.** We do not think there will be any occasion of that sort for him going on.

Mr. **Folk.** I am very sure there will be, and we want to take this case up next week, if it suits you gentlemen, too.

Mr. **Jouett.** Col. Stone tells me that we might finish with Mr. Smith in an hour, if we can take a 10 or 15 minute recess now to have a conference with him. We are desirous of shortening it as much as possible.

Chairman **Meyer.** Well, we will take a 10-minute recess to give you an opportunity to talk it over.

Mr. **Jouett.** All right, sir.

(After conference between Chairman Meyer and counsel.)

Chairman **Meyer.** We will adjourn here until 10.30 to-morrow morning.

(Whereupon, at 5.05 o'clock p. m., the further hearing in this case was adjourned until to-morrow, Saturday, May 6, 1916, at 10.30 o'clock a. m.)

LOUISVILLE & NASHVILLE RAILROAD CO.

SATURDAY, MAY 6, 1916.

WASHINGTON, D. C.

The hearing was resumed at 10.30 o'clock a. m. before Chairman Meyer.

Appearances: As heretofore noted.

M. H. Smith resumed the stand and testified further as follows:

Mr. **Folk.** We are not through with the witness.

Mr. **Stone.** You said you were yesterday.

Mr. **Folk.** We can not finish until he answers the questions; so we are not ready at this time to turn the witness over to you gentlemen, and we can not be ready until the questions are answered after the court has ruled upon them. However, if there is any matter that you gentlemen desire to interrogate him about, to explain anything that you think should be explained, I will not interpose any objection at this time to asking questions of that nature.

Mr. **Stone.** I will ask you, Gov. Folk, if you did not turn the witness over yesterday afternoon?

Mr. **Folk.** I said I had asked all the questions that I desired to ask at this time.

Mr. **Stone.** You said you were through for the present, and turned him over to us to cross-examine, as I understood it.

Mr. **Folk.** I can not finish until he answers the questions that have been asked him.

Mr. **Stone.** Do you object to our going on?

Mr. **Folk.** The questions that he refused to answer, until the court rules.

Mr. **Stone.** I do not understand that you object to our going on.

Mr. **Folk.** I said if there was any matter that you wished to have the witness explain, which, in other words, will not be in the nature of a cross-examination, but rather as to matters that you think should be explained——

Mr. **Stone** (interposing). Well, it is not merely an explanation, perhaps. We may want the witness to testify as to the number of facts as well, and we do not want to be confined in that fashion.

Mr. **Folk.** I just wish you to fully understand that we are not through with the witness.

Mr. **Jouett.** The effect of it is that you reserve the right to call him when the court has passed on those other matters?

Mr. **Folk.** The effect of it is that I do not think you are entitled to cross-examine, as such, at this time, because he has refused to answer numerous questions, and it would hardly be fair for him to refuse to answer the number of questions that he has refused to answer on our side, and then for you to have him for so-called cross-examination.

Mr. JOUETT. We will not cross him about matters that he refused to testify about, but about matters that he has testified about. We certainly see no objection to continuing the examination of the witness.

Mr. FOLK. We will have to tell as you ask the questions. I say this merely by way of explanation to you gentlemen.

Chairman MEYER. I do not understand that Gov. Folk interposes any objection to your inquiring now.

Mr. FOLK. No.

Senator LEA. May it please your honor, in behalf of myself I am going to object to every character of cross-examination that does not relate to the witness's responses to the questions that were asked by counsel for the commission. In other words, I am going to object at this time to the attorneys for the carrier introducing Mr. Smith as their witness by having him testify to matters that were not brought out in responses to the questions asked by the counsel for the commission. Mr. Smith is the executive of the carrier that is defendant. He can, therefore, be produced for examination in regard to new matter at any time the attorneys for the carrier introduce their proof, and I feel that before any matters of that character are pursued, that after the counsel for the commission has finished introducing proof on behalf of the commission, the orderly and logical way, then, would be that I, as the petitioner, would be permitted to introduce such testimony as I may desire to.

Mr. JOUETT. Do you mean to object to cross-examination in regard to any other matters than the past questions?

Senator LEA. I mean to object to any cross-examination that does not deal with the examination on responses to the questions asked by counsel for the commission. The witness covered a great many subjects that were not at all responsive to the questions asked by counsel for the commission. He did so merely on sufferance and the courtesy that was shown him by those that represent different interests.

Mr. JOUETT. Well, the objection is noted, I suppose?

Chairman MEYER. I think counsel have made their views clear.

Mr. JOUETT. Mr. Commissioner, before beginning the examination of Mr. Smith, I think it proper, in order that our position may be fully understood, to state that we still adhere to the contention that none of the first 12 paragraphs of the Senate resolution is within the jurisdiction of the commission. We are willing, however, in view of the examination that has been had, to proceed with the cross-examination of the witness in connection with the first 11 paragraphs of the Senate resolution, not thereby, however, waiving our claim as to its incompetency or waiving any rights to object to the matters embraced either within those or in the twelfth paragraph.

Senator LEA. Now, may it please the chairman, to make this record complete we want it to be known that it is the insistence of the petitioner in this case that any questions, whether admitted or excluded, by the counsel for the defendant carrier that attempts to show political activity on the part of the carriers or individuals are an admission and a waiver of the right of this commission to force answers in regard to the political activities of carriers, and it will be so insisted in court.

Mr. **Folk.** Will you please read that statement just made by Senator Lea?

(The reporter thereupon read the last statement made by Senator Lea.)

Senator **Lea.** Let us change that, too, as an acknowledgment of the jurisdiction of the commission to force witnesses to answer as to the political activities of the carriers.

Mr. **Jouett.** The defendants, of course, deny that questions of that sort would have any such legal effect, but we are willing to state frankly that we do not expect to ask this witness anything with regard to matters involved in paragraph 12.

Chairman **Meyer.** Nor at this time with respect to matters not embraced within the questions asked by Gov. Folk?

Mr. **Jouett.** The subject matter in the first 11 paragraphs has been covered so generally that a question could hardly be asked, it seems to me, that did not relate to some matter that was brought out by Gov. Folk, and that is the purpose of this examination.

Chairman **Meyer.** Suppose you proceed, and if any question arises we can take care of those matters when the time comes.

Mr. **Jouett.** Yes; that is right.

Mr. **Jouett.** Mr. Smith, as you are aware, there have been two reports filed by the Interstate Commerce Commission with the Senate in response to the Senate resolution No. 153. I wish that you would make such statement as you may think proper concerning that report of the commission, which is the second report, that undertakes to deal with the whole question, it being understood that the first report related merely to passes, and in considering this full report I will ask you to confine yourself to the first 11 paragraphs of the Senate resolution.

Mr. **Folk.** I object to that question. The witness is not a tribunal qualified to pass upon the reports of the Interstate Commerce Commission to Congress. The question is too broad, in the first place. It calls for no specific information within the knowledge of the witness and merely calls for the opinion of the witness, the conclusion of the witness, and the witness is not qualified to express an opinion upon the report of the commission. Whatever he may know of his own knowledge may be the proper subject of examination, but your question does not call for his knowledge as to any specific fact.

Mr. **Jouett.** He is asked for a statement of facts which would necessarily be within his knowledge, with reference to the matters discussed in that report. The question was framed in that way in order to simplify and shorten this examination. I will say to counsel that it is our intention to have Mr. Smith state the facts from the standpoint of the Louisville & Nashville Railroad which bear upon these different portions of this report, in the first 11 paragraphs.

Mr. **Folk.** Furthermore, he was not asked in his examination in chief, if you may term it that, for any information concerning the report of the commission. He was not asked regarding the report of the commission, and you are interrogating him about something concerning which he was not asked in his chief examination.

Mr. JOUETT. Well, we insist that he was asked entirely about matters involved in the commission's report. Every question related to the examination of all of the first 11 paragraphs of the commission's report. I do not understand at all that we are confined to a cross-examination of each particular question, but the witness will be entitled to state in a general way the facts that he knows with reference to any of the matters brought out by Gov. Folk. If the examination does not mean that, I do not see how it can accomplish anything.

Mr. FOLK. If he has any specific evidence and any specific point that might be admissible; but you are asking for his opinion on the reports of the commission. He has given his opinion of Congress, he has given his opinion of legislative bodies, he has given his opinion of the commission, and his opinion of the commission's report no doubt will be as poor as his opinion of Congress and his opinion of other legislative bodies, but it is not the proper subject of examination or cross-examination at this time.

Mr. JOUETT. I have not asked the witness for his opinion. I have asked for a statement of facts connected with those different paragraphs upon which the commission has proceeded, and I think the gentlemen need not be concerned about it. It is a comparatively brief statement, one that Mr. Smith has boiled down, and will, I think, greatly shorten this examination.

Mr. FOLK. Furthermore, I object to the witness reading any more answers. We permitted him to read some answers in his examination in chief merely as a matter of courtesy, but the witness is not entitled to prepare his answers in advance and then go upon the witness stand and read from long documents prepared answers to questions to be propounded.

Mr. JOUETT. I think the custom has been uniform in practice before the commission for the witness to prepare his answers where it is a statement of facts that is at all voluminous. It is his own work. He sat down in a quiet way, when he could have the whole matter in hand, and undertook to tell the facts about these different paragraphs. I do not see how that could be in anywise objectionable. It becomes his testimony.

Chairman MEYER. Mr. Jouett, the reports of the commission to the Senate have not been made a part of the record in this proceeding. Now, as one member of the commission, I am sure I should want to have Mr. Smith, or anyone else, point out anything in those reports that is not correct, or that ought to be modified, or that may suggest misleading conclusions. I am not sure that this is the proper time, however.

Mr. STONE. Leave out the question of the report and let him give his answer as to the first 11 paragraphs of the Senate resolution.

Chairman MEYER. The questioning to-day, I think, ought to be confined to those matters that were gone into on examination by the chief counsel.

Mr. JOUETT. I will change the question in this way, Mr. Commissioner, and see if that will be satisfactory:

Will you, Mr. Smith, make a statement of facts bearing upon each of the first 11 paragraphs of the Senate resolution, independent of the report that has been made by the commission? In other words, will you now briefly state the facts relating to each of those paragraphs?

Mr. **Folk.** I object to that as being too broad and covering all 11 paragraphs and not calling for information within the knowledge of the witness, but asking the witness to state the facts, as if he were counsel in the case.

Mr. **Jouett.** If your honor please, this is an examination in which the chief executive of the defendant is upon the stand. I think the commission wants the truth and wants the facts about these matters which are under investigation. The commission has set forth in its order 13 paragraphs or articles about which it has instituted this investigation. Now, I do not understand why there should be any reason for objecting to the chief executive of the defendant making a statement of the facts relating to each of those 11 paragraphs. How could it be gotten at more properly or easily than in that way? I do not see why we should be limited to a particular form of the question that may be suggested by counsel for the commission.

Mr. **Folk.** This is supposed to be a cross-examination, and yet his question calls not only for information not within the knowledge of the witnesses, but it calls for original evidence that was not brought out in chief.

Mr. **Stone.** If your honor please, it seems to me it is an erroneous idea, if counsel entertain it sincerely, that on a cross-examination of a witness introduced by his side we are confined entirely to cross-questioning the witness upon the particular questions or testimony brought out by his questions. I have never known, and I have been practicing law for some time, any such rule to be established, by a court of justice at least. We are entitled not only to cross-examine Mr. Smith upon the matter brought out by Mr. Folk, but upon any facts within his knowledge upon the subjects already testified about.

Chairman **Meyer.** May I interrupt you right there?

Mr. **Stone.** We want to prove those facts by the executive of the defendant Louisville & Nashville Railroad.

Chairman **Meyer.** You will pardon me right there, Mr. Stone?

Mr. **Stone.** Yes, sir.

Chairman **Meyer.** In so far as the witness's answers relate to the facts with respect to which there has been testimony up to this time, you may proceed: and, as I have said before, as one member of the commission—and I am sure other members will feel the same way—if there is anything in our reports to the Senate that Mr. Smith desires to discuss, I shall be glad to learn of his views; but this is not the proper time.

Mr. **Jouett.** We are not asking for anything about a report now. We have withdrawn that. We are asking for facts within the knowledge of the witness bearing upon the subjects set forth in the first 11 paragraphs of the Senate resolution.

Chairman **Meyer.** And relating to matters already in the record?

Mr. **Stone.** Not at all, sir; not at all, sir. We think we have a right to bring out the facts within the knowledge of this witness upon those 11 subjects.

Chairman **Meyer.** Well, the commission certainly wants the facts.

Mr. **Stone.** That is what we want.

Chairman **Meyer.** Well, if you will proceed we will take up the particular questions as they arise.

Mr. **Stone.** All right. It seems to me that counsel on the other side are overtechnical this morning about this examination.

Mr. Folk. The gentlemen have no right to cross-examine the witness at all.

Mr. Stone. Why not?

Mr. Folk. When he is the chief executive of the road you represent?

Mr. Stone. Certainly.

Mr. Folk. He comes here and refuses to answer the questions.

Mr. Stone. You bring him here.

Mr. Folk. He is in contempt of this commission. He has no right to be taken over by you gentlemen until the courts have ordered him to answer—until he has purged himself of the contempt. It is only through courtesy that you are permitted to interrogate him.

Chairman Meyer. Let us see what the testimony of the witness will be; then we will know how to proceed.

Mr. Stone. That is what I think. I agree with the commissioner.

Chairman Meyer. The witness will please proceed to answer the question; but, first, the question ought to be read.

Mr. Jouett. Will you read the last question?

The Reporter (reading):

> I will change the question in this way, Mr. Commissioner, and see if that will be satisfactory:
>
> Will you, Mr. Smith, make a statement of facts bearing upon each of the first 11 paragraphs of the Senate resolution, independent of the report that has been made by the commission? In other words, will you now briefly state the facts relating to each of those paragraphs?

Mr. Folk. Is this his own answer that he has there?

Mr. Jouett. This is his own answer.

Mr. Folk. That is a brief.

Mr. Jouett. No; it is not.

Mr. Folk. Thirty-six pages of prepared matter. It is an argument.

Mr. Stone. It will expedite this examination to let him go ahead.

Mr. Jouett. I think if Gov. Folk will take a minute to look at it he will not raise any objection to it.

Mr. Folk. Did you prepare it?

Mr. Jouett. No; I did not. The witness prepared every part of it.

Chairman Meyer. The witness may proceed.

Mr. Smith. As the commission's report containing its answer to the first 11 questions embraced in the resolution——

Mr. Folk. We object to that. The matter of the report has been excluded, you say. You said you were not going to ask him about the report.

Mr. Jouett. It is just introductory there.

Mr. Stone. You are not going to be hurt.

Mr. Folk. That is all introductory, so far as that is concerned. I submit that the better plan would be for counsel to ask the questions calling for information within the knowledge of the witness. You have now asked him a wholesale question to give all the information, all the facts, in relation to the first 11 paragraphs in the Senate resolution.

Mr. Jouett. Yes.

Mr. Folk. That calls for nothing definite. It is too general; it is too vague to have any standing as a question.

Mr. **Jouett**. It is perfectly specific. It relates just to those 11 matters, and I may say that the examination will be three times as long if we have to go over it by question and answer as it would be if we take this statement. If counsel will take two minutes to look at that statement, they will see that there is not anything objectionable about it. It simply states his views about these different propositions, boiled down, as he himself has done it, without any assistance whatever, not a suggestion.

Mr. **Folk**. It seems to me that if he could dictate it by himself last night, he could say it off-hand here this morning by himself.

Mr. **Jouett**. He did not dictate it last night, but before he came here, in his office, to Mr. Locke.

Mr. **Folk**. Before he came to Washington?

Mr. **Jouett**. Yes.

Mr. **Folk**. This is a long argument.

Mr. **Jouett**. It is not an argument.

Mr. **Folk**. It is not an answer to a question at all. It should be filed as a brief.

Chairman **Meyer**. May I suggest that if the witness prepared this before he came to Washington, it is to be presumed it is not, necessarily, responsive to those things regarding which he was questioned here in Washington; but, aside from that, I think you will save time by having the witness proceed, but I do wish to call attention to that point.

Mr. **Folk**. Let us file this as an exhibit, Mr. Jouett.

Mr. **Stone**. He wants to read it, like you read that correspondence.

Chairman **Meyer**. The witness may proceed.

Mr. **Stone**. Go ahead.

Chairman **Meyer**. Subject to objection.

Mr. **Folk**. The record should show that this answer which the witness is reading was prepared before he came to Washington.

Mr. **Jouett**. That is true.

Mr. **Stone**. And now making it a part of his testimony, after being sworn.

Mr. **Folk**. Yes, sir.

Mr. **Stone**. All right. Let it be noted.

Mr. **Folk**. Mr. Smith, did you prepare that yourself?

Mr. **Smith**. Do you want the details?

Mr. **Folk**. Yes, sir; if you prepared it yourself.

Mr. **Smith**. It is a copy of a report that I made to the chairman of the board of directors of the Louisville & Nashville Railroad soon after I received the copy of the report of the commission to the United States Senate.

Mr. **Folk**. Did you consult your attorneys before preparing it?

Mr. **Smith**. No.

Mr. **Folk**. Had they seen that report?

Mr. **Smith**. Oh, yes.

Mr. **Folk**. Before last night?

Mr. **Smith**. Yes. They handed it to you just now.

Mr. **Folk**. Before last night?

Mr. **Smith**. Oh, yes; I suppose so.

Mr. **Folk**. Did they make any corrections?

Mr. **Smith**. They can answer for themselves about that. You can question them about that.

Mr. FOLK. Did they make any corrections in it?

Mr. SMITH. I don't know. I don't think they did. It may be.

Mr. JOUETT. Not a line. Not a word.

Mr. STONE. Proceed to read now.

Mr. JOUETT. With the exception of that case before the Interstate Commerce Commission referred to. I made that reference; that is all.

Chairman MEYER. You may proceed.

Mr. SMITH. I can not proceed unless you can keep Gov. Folk down in his seat, with his mouth shut. We have lost half an hour or 35 minutes, and we have not gotten very far.

As the commission's report containing its answer to the first 11 questions embraced in the resolution covers more than 60 closely printed pages, besides numerous exhibits set out in an appendix, it is, of course, impossible, as well as improper, for me to attempt to discuss it extemporaneously. I have, therefore, prepared a sort of memorandum analysis of the report, which, as it is my own work, I trust the commissioner will permit me to read as my testimony.

The Interstate Commerce Commission has made two formal reports to the Senate in obedience to the resolution introduced by Senator Luke Lea, calling for an investigation of the affairs of the Louisville & Nashville Railroad Co. and certain of its allied companies. The one made on July 2, 1914, related solely to the issuance of passes. The other returned February 15, 1915, purported to cover all 13 of the queries embraced in the Senate resolution, but as to the thirteenth question, which relates to passes, this report simply referred to the former report.

With reference to the commission's answers to the first 11 questions, will say that as they are not involved in any formal complaint upon which action can be taken, and as I could not hope to have my corrections reach all those who read the original report and the newspaper accounts of it, I have not deemed it essential to go into elaborate detail in this effort to analyze it, I will, however, discuss as briefly as I can, some of its more important features.

For convenience, I reproduce the questions as to the headings under which I will discuss the answers given in the commission's report:

> Question 1. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad?
>
> Question 2. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been purchased, leased, controlled, or arrangements entered into with for the purpose of controlling by either the Louisville & Nashville Railroad or the Nashville & St. Louis Railway?

Under the subheading "Cost of road," page 170, the commission undertakes to show that "at least $16,000,000 shown in the cost of road accounts covers items which should not be charged as a part of the cost of this carrier's road." In the statement that follows, it refers to discount on stock, other expenses in connection with the sale of stock, discount on bonds, other expenses in connection with the sale of bonds, interest, and dividends, amount credited to profit and loss, etc. The source from which this statement was compiled is not clear. The annual reports of the Louisville & Nashville Railroad Co. since its organization correctly show the issue of bonds and the amount received from sale, interest, issue of stock, etc., and there should have been no difficulty in compiling a correct statement therefrom.

The report undertakes to show stock dividends amounting to $16,441,548 par value. The Louisville & Nashville Railroad in its early history, like other similar enterprises in this territory, was constructed by capital furnished by municipalities, communities, and people located along the line, that considered the facilities to be thus created of such benefit as to justify the investment, even at a loss of the entire capital; and enormous sums have been thus expended and lost in the territory south of the Ohio and east of the Mississippi River. As the raising of new capital was exceedingly difficult, the stockholders permitted the net earnings, when any were earned, to be used for corporate purposes—i. e., invested in additions and betterments instead of being distributed as dividends. In 1887 the directors, with the approval of a majority of the stockholders, appropriated all of the net earnings for the ensuing three years to additions and betterments to the property, the stockholders to receive scrip—stock dividends—equal to the amount so appropriated.

For 54 years, from 1860—or about the date in which the road was completed from Louisville to Nashville—to the present date, there were 18 years in which the stockholders received no cash dividends. For 1 year they received 1.1 per cent; for 1 year, 1.5 per cent; for 2 years, 3 per cent; for 1 year, 3½ per cent; for 3 years, 4 per cent; for 1 year, 4½ per cent; for 5 years, 5 per cent; for 2 years, 5¼ per cent; for 5 years, 6 per cent; for 11 years, 7 per cent; and for 4 years, 8 per cent. The average cash dividend paid over the period of 55 years ended June 30, 1915, was 3.72 per cent. The total net earnings in excess of cash dividends applied to additions and betterments or corporate purposes from 1860 to June 30, 1914, is several times greater than the total of stock dividends.

I have here a statement, an abstract from the annual reports, showing mileage, gross earnings, operating expenses, net earnings from traffic, other income, income from all sources, charges against income, interest and rents, taxes, other charges, net income, dividends, cash, stock and total, and surplus carried to profit and loss. This statement shows that from October 1, 1860, to June 30, 1915, the surplus that was carried to profit and loss amounted to $57,193,761.25, against the statement of the commission that the stock dividends amounted to $16,441,548 par value during that period.

There is therefore no water in the capital stock of the Louisville & Nashville Railroad.

Mr. Jouett. Let that statement be filed as Exhibit No. 2 to Mr. Smith's testimony.

(The statement referred to was thereupon marked "Smith Exhibit No. 2," and is attached hereto and forwarded herewith.)

Mr. Smith (reading):

> Question 3: Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part and whether, under separate ownership, they would be competitive to the various points in their territories.
>
> Question 4: Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates.

The answer or conclusion as to these is to the effect that the acquiring of the Nashville, Chattanooga & St. Louis Railway by the Louisville & Nashville Railroad Co. was "primarily for the purpose of restricting competition and to maintain rates," and they undertake to confirm this by elaborate descriptions of agreements as to division of territory, and especially the division of territory agreed upon in 1906, and they conclude that—

> It is therefore apparent that, although entering different local territory, these two lines serve the same general territory, and as to a great volume of through traffic they form parts of parallel and competing routes. Furthermore, it is clear that if independently controlled and free from restraining traffic agreements they would engage in active competition with each other.

The Louisville & Nashville Railroad Co. has, at least since 1869, cooperated with other railways south of the Ohio and east of the Mississippi River in endeavoring to adopt and maintain reasonable rates for the transportation of persons and property, and, while not altogether successful, has succeeded to a much greater extent than railways in some other parts of the country.

In doing so the various railways have necessarily entered into agreements for the adoption of rates and for maintaining the same, and to secure the best financial results have in many instances agreed to a division of territory whereby the traffic would move via the shorter lines or the lines yielding the best results.

Enormous sums have been wasted by contests between competing lines where one of the competitors operates a longer line at a cost that equals or exceeds the total revenue, which at the same rates may yield the shorter or more direct line a net revenue. This is an economic waste that should be prohibited, and would be prohibited if the railroad systems as a whole were controlled by the Government.

As an illustration: On January 21, 1909, I was required to give evidence before Commissioner Charles A. Prouty in the case of Receivers and Shippers' Association of Cincinnati *v.* Cincinnati, New Orleans & Texas Pacific Railway, from which I make the following extract:

> Mr. BAXTER. Have you ever known or heard of any rate adjustment or manipulation of rates made by said association or by any of the members thereof the object or result of which was to place relatively high rates on merchandise and manufactured articles and relatively low rates on food products when shipped from Cincinnati or Chicago south over the western lines, and to place relatively low rates on merchandise and manufactured articles and relatively high rates on food products when shipped from the eastern seaboard cities over the eastern lines? * * *
>
> A. I never have. The designation "eastern lines" was intended to mean transportation lines east of the Buffalo-Pittsburgh-Huntington line, and the designation "western lines," those west of that line. All that that would signify was a common-sense agreement, that was finally reached between the so-called eastern and western lines, for a division of territory. Prior to such arrangement there had been great freight irregularities at great cost to the carriers, and greatly to the inconvenience of their patrons. At one time property—grain, etc.—was taken at exceedingly low rates up the Ohio River, from Cincinnati and points below Huntington, W. Va., transported over the Chesapeake & Ohio Railroad, and down the coast lines into the interior of South Carolina and Georgia. During those periods, at times extremely low and almost abnormal rates were made by what are known as the trunk lines between the West and the seaboards, which includes the so-called eastern lines, to transport property, via Baltimore and other points, and especially via Baltimore, into that territory, at extremely low rates. The so-called western lines endeavored to retaliate by transporting property east of the Buffalo-Huntington

> line, into the same territory, such as sugar, coffee, etc., making exceedingly low rates. The lines became aware finally of the folly of such conduct and the injury to all interests, including their patrons, and agreed upon a division of territory, the effect of which was that the lines, so-called eastern lines, would not undertake to transport the property from west of the Buffalo-Huntington line into the southeastern territory, and the western lines would refrain from transporting property from points east of the dividing line into the southeastern territory.
>
> If I may be permitted, the wisdom of such arrangement can, I think, be illustrated by assuming three points, 200 miles apart, in a triangle like that [indicating]. Assuming the average rate of transportation by the short line to be 1 cent per ton per mile, or $2 per ton, and assuming that the cost of operating expenses would be one-half cent per ton per mile, or $1 per ton, it would follow that the net earnings from the property transported over the short line would be $1 per ton. If the long line competed for 400 miles, the cost would absorb the entire revenue. Assuming that 10,000,000 tons were transported over the short line, the profit would be $10,000,000. If it were all transported by the long line, it would be all. When the Louisville & Nashville Railroad Co. created the line from Nashville to Montgomery, Ala., which it opened for traffic on the 1st of October, 1872, a condition something like that was created. Assuming that this point is Nashville [indicating], Montgomery at this point [indicating] 305 miles, Atlanta at this point [indicating], 289 miles from Nashville and 175 miles from Montgomery. An agreement was made whereby the Louisville & Nashville agreed that it would not receive property for transportation at Nashville via Montgomery to Atlanta and contiguous territory, and the Nashville & Chattanooga Railroad agreed that it would not receive property at Nashville for transportation to Montgomery and contiguous territory, leaving the property to move by the short and direct lines. In addition, extend this line of the Louisville & Nashville to Louisville, and extend this line, which was the Nashville, Chattanooga & St. Louis Railroad, to Cairo. In addition to agreeing not to compete at Nashville, it was agreed that all property which the L. & N. received at Louisville, or received from connecting lines from points beyond, which reached Nashville being destined to Atlanta and contiguous territory, would be turned over to the Nashville, Chattanooga & St. Louis Railroad. And it agreed for St. Louis and points beyond, for Montgomery and contiguous territory, that the property should be turned over to the L. & N. at Nashville. That arrangement is still in effect.
>
> Commissioner PROUTY. Were you able to carry that out before you owned a controlling interest in the other road?
>
> A. At the time this arrangement was made the Louisville & Nashville had no interest in that road. It acquired an interest in the stock in 1880, nine years after this arrangement was made, and the arrangement has been continued, and notwithstanding that about the same time the Louisville & Nashville also acquired an interest in the line from Montgomery to Atlanta. It was simply an arrangement for conserving the revenue of the carriers and enabling them to give better service to their patrons.

That the efforts of the railways south of the Ohio and east of the Mississippi River to maintain rates were recognized by the commission is shown by the following extract from proceedings. "Hearing on petitions for extension of time within which to comply with the provisions of the act of March 2, 1893," when, on December 6, 1897, I was being interrogated by the commission:

> Chairman WM. R. MORRISON. I do not question at all but what you have told us the truth about what your road has done, because I have been watching this thing myself and have seen less evidence of what we call rate cutting—less of the symptoms or signs that indicate taking a lower rate than is prescribed by law—on your road than on many—most other systems.

The line from Nashville to Montgomery, which was acquired and created by the Louisville & Nashville Railroad Co., was opened for traffic on the 1st of October, 1872. Theretofore all traffic passing between, say, Montgomery, Ala., and Nashville, Tenn., and points beyond had been forwarded via Chattanooga and Atlanta, a distance of 464 miles. The distance via the new line was 305 miles. The distance via the new line, via Montgomery, to Atlanta was 480 miles, while the distance via the line via Chattanooga was 289 miles. In those days the usual course would have been for the long lines to have entered into a contest with the shorter lines. As the service rendered by the longer line would necessarily have been inferior to that rendered by the shorter line, in order to secure traffic it would be necessary to make lower rates than were in effect via the shorter, more direct, and better service line.

The parties at interest entered into what is termed a division of territory, the parties being the Louisville & Nashville; Nashville, Chattanooga & St. Louis; St. Louis, Iron Mountain & Southern; Memphis & Charleston; and other roads. It was agreed that all traffic moving between Nashville and Montgomery should move via the new line. It was also agreed that all traffic moving between Louisville and points beyond and Atlanta and beyond, via the Louisville & Nashville, should continue to move via Chattanooga, the direct line; and that traffic moving over the Nashville, Chattanooga & St. Louis Railway between St. Louis (or from Hickman and Cairo) and beyond and Montgomery should be moved via the Louisville & Nashville from Nashville. The N., C. & St. L. Ry. and connecting lines have always competed, and still compete, with the Louisville & Nashville on traffic passing between St. Louis and points beyond (in the large territory in the Northwest) and Montgomery for the transportation north of Nashville, shipments controlled by each line passing over the N., C. & St. L. via Chattanooga to Atlanta from Nashville.

Traffic passing between points beyond Atlanta and beyond Montgomery, about equi distant from Nashville via either route, was forwarded direct by the line that secured it; in other words, traffic shipped from Louisville to Macon, Ga., was forwarded via Montgomery, and traffic shipped from Cairo, St. Louis, etc., to Macon, Ga., was forwarded via Chattanooga and Atlanta. This arrangement is still in effect, the agreement quoted by the commission—of 1906—being a modification of the agreement made in 1872, rendered necessary by the opening of the direct line from Cincinnati via Knoxville to Atlanta, the distance by such line between Cincinnati and Atlanta being 488 miles, while the distance via Louisville, Nashville, and Chattanooga is 588 miles. Although the Louisville & Nashville controls a line from Louisville via Knoxville to Atlanta 474 miles in length, the traffic from Louisville continues to be forwarded via Nashville and Chattanooga—distance, 475 miles.

Throughout the commission's report stress is laid upon the alleged efforts of the railways to limit competition. The fact that what has been done is in the interest of maintenance of rates, which is insisted upon under the act to regulate commerce as construed and administered by the Interstate Commerce Commission, rendering it a penal offense to transport property or persons at less than the authorized tariff rates, is ignored.

The propriety of using an exceptionally long line in lieu of a shorter one has been frequently considered by the Interstate Commerce Commission, and such practice condemned. This was particularly true in the fourth section Sugar Rate case, reported in 32 I. C. C., 606. There the Louisville & Nashville Railroad was the short line from New Orleans to Gulfport. A circuitous route between these two points is the New Orleans & Northeastern Railroad from New Orleans to Hattiesburg and the Gulf & Ship Island Railroad from Hattiesburg to Gulfport. That is, in effect, going around two sides of a triangle.

Mr. **Folk**. Do you consider that testimony?

Mr. **Jouett**. That particular part is a statement of his conclusions that it is erroneous.

Mr. **Folk**. Just as the rest of it.

Mr. **Jouett**. No; I think the rest of it is all facts.

Mr. **Folk**. It is all surmise or argument.

Mr. **Stone**. He says they are erroneous. Is not that a fact?

Mr. **Folk**. If he has stated a fact so far that he knows of his own knowledge, I do not know of it.

Mr. **Jouett**. The question of competition under that contract for a division of the territory is fully discussed there, and that was one of the important things you examined about.

Mr. **Stone**. It would seem to me that we would make time to let him go on and read it. Go ahead, Mr. Smith.

Mr. **Folk**. Read some more argument.

Mr. **Smith**. It is in effect going around the two sides of a triangle rather than taking the short cut. The two roads constituting the lone line asked relief from the fourth section in order to enable them to compete with the Louisville & Nashville Railroad Co. from New Orleans to Gulfport. This was denied by the commission, which, in the course of its opinion, said:

> No general maximum limitation as to the extent that the long line may exceed the short line in length will be included in the order as a condition upon which this relief is granted. This does not mean, however, that it is the view of this commission that these lines may depart from the fourth section in meeting via unreasonably circuitous routes rates in effect via direct lines. It is expected that the circuitous lines will refrain from continuing departures from the fourth section in cases where there is an unreasonably great disparity between the distance via their route and the distance via the short line, and not attempt to compete via very circuitous routes with lines one-half to one-third as long. An instance of this kind occurs via the New Orleans & Northeastern and Gulf & Ship Island Railroads, which operate a joint route from New Orleans to Gulfport, Miss., via Hattiesburg, Miss., a distance of 187 miles. The distance via the short line between these points is 67 miles. Competition via such a circuitous route is absurd. Authority for this route to meet the rates of the short line without observing the fourth section will be denied, and should it subsequently be found that other situations similar to this one are continued, such further orders as may be necessary in each case will be made.

The statements relative to the interest of the Louisville & Nashville in the Nashville, Chattanooga & St. Louis and other railroads; statements in answers to questions 3 and 4, describing the acquiring of different railroads and the purpose of so doing; the answer to question 5, lease of the Nashville & Decatur Railroad, etc.; and answers to questions 6 and 7, 8 (*a*) and 8 (*b*), contain numerous errors, and while the conclusions that the commission has endeavored to draw are misleading and erroneous they do not seem to be of sufficient importance to justify the space that would necessarily be used to correct them.

However, under the circumstances, it seems proper to comment at some length upon the last sentence of the commission's report in answer to question 8 (*b*), reading as follows: "Such a policy is unfair to the minority stockholders of subsidiary companies." This may be construed as asserting that the Louisville & Nashville Railroad's ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway has been or is "unfair to the minority stockholders" of the N., C. & St. L. Ry. Co. The ownership by the Louisville & Nashville Railroad Co. of a majority of the capital stock of the Nashville, Chattanooga & St. Louis Railway Co., thus giving it control of the management, devolves upon it the responsibility for its proper management in the interest of all stockholders of the N., C. & St. L. Ry. The by-laws of the Louisville & Nashville Railroad Co. devolve upon me supervision of its interests in other corporations. My being a director of the N., C. & St. L. Ry. Co.—in a manner representing the majority of the stock—also emphasizes the duty and responsibility of caring for the N., C. & St. L. Ry., and this has been done, unfortunately at heavy losses to the Louisville & Nashville Railroad Co. I at one time acquired an unfinished road that had been through bankruptcy, in middle Tennessee, which, if it had been completed, would have connected with the Louisville & Nashville Railroad at Decatur Junction, and transferred it to the N., C. & St. L. Ry. at cost. I, for the Louisville & Nashville Railroad Co., also advanced money to the N., C. & St. L. Ry. to pay its floating debt, thus reducing the rate of interest from 6 and 7 per cent to 4 per cent, which was afterwards repaid by the N., C. & St. L. Ry. Co.

The Nashville, Chattanooga & St. Louis main line extends through Nashville to Hickman, Ky., on the Mississippi River. That company has for many years secured an important interchange of traffic with the St. Louis, Iron Mountain & Southern Railway at Columbus, Ky., using the tracks of the Mobile & Ohio between Union City and Columbus. Changes in conditions, by the extension of the St. Louis, Iron Mountain & Southern Railway to Memphis, and other causes, have resulted in a cessation of this interchange. The N., C. & St. L. Ry. Co. also enjoyed an important interchange traffic with the Illinois Central Railroad at Martin, Tenn. The extension of the Illinois Central Railroad to Birmingham, Ala., has decreased the inducement of the Illinois Central to continue the interchange because of securing increased revenue for the longer distance to Birmingham on a considerable portion of the traffic theretofore interchanged. The Illinois Central also secured a line via Evansville to Nashville, using the tracks of the Tennessee Central from point of interchange at Hopkinsville, Ky. This made it to the interest of the Illinois Central to endeavor to secure the long haul to Birmingham and to Nashville, and to that extent decreased its interest in the interchange with the N., C. & St. L. Ry. at Martin, Tenn., although I believe an important interchange is still maintained at Martin.

The Paducah and Memphis division, a line extending from Paducah to Memphis, via Lexington, Tenn., had a branch to the Tennessee River, and leased it to the Nashville & Chattanooga Railroad at cost—that is, the Nashville, Chattanooga & St. Louis Railway—the rental amounting to 5 per cent upon the cost to the Louisville & Nashville Railroad.

These conditions—or prospective conditions, as they were at the time I acted—caused me to endeavor to secure an independent connection for the N., C. & St. L. Ry. at the Ohio River and beyond, especially for St. Louis traffic.

Keep in mind that the Louisville & Nahsville Railroad has its own rails between Nashville and St. Louis.

The procedure was to furnish the capital to construct a railroad, with ample terminals at Cairo, from Cairo to Thebes, Ill., there connecting with the several roads using the Thebes bridge, expecting to secure rights over what was known as the Valley road, controlled by the St. Louis, Iron Mountain & Southern, between Thebes and East St. Louis, and the building of a branch of the N., C. & St. L. Ry. from about Murray, Ky., to a point on the Ohio River opposite Cairo. Surveys were made, and I believe some property purchased. I succeeded in negotiating with the Illinois Central Railroad trackage rights over their bridge across the Mississippi River between East Cairo and Cairo. In return, the Louisville & Nashville Railroad granted the Illinois Central trackage rights over its railroad and bridge between Evansville, Ind., and Henderson, Ky.

I encountered difficulties in securing satisfactory trackage rights from the St. Louis, Iron Mountain & Southern over the road from Thebes to East St. Louis, and caused surveys and estimates to be made for the building of a road from Thebes to a point on the L. & N. R. R. in the vicinity of Queens Lake, thus forming a through line between East St. Louis and the N., C. & St. L. Ry. at or near Murray, Ky. While this work was being proceeded with, the Chicago, Burlington & Quincy Railroad Co. extended its line from a point in Illinois to Herrin, Ill., and as there was some agitation for extending the New Orleans, Mobile & Chicago Railway to Paducah, I concevied the idea of inducing the C., B. & Q. and perhaps other railroads to extend their line to Metropolis, Ill., and building a connection between Metropolis and point of connection with the N., C. & St. L. Ry. at Paducah, crossing the river by ferry on bridges; and I conferred with Mr. James J. Hill, who, through the Great Northern Railway, controlled the C., B. & Q., and he favored making the extension to the Ohio River. I organized and secured a Kentucky charter for the Paducah & Illinois Railroad Co. and made an organization with a board of directors of officers and employees of the Louisville & Nashville Railroad Co. in Louisville, and purchased additional terminal property in Paducah, and after all was fully organized and in shape, transferred the control of the company to the N., C. & St. L. and C., B. & Q. railroads; also turned over the property purchased in Paducah to the N., C. & St. L. Ry., they paying the Louisville & Nashville Railroad Co. cost and interest.

I also brought about negotiations for obtaining an interest in the New Orleans, Mobile & Chicago, with the view of extending same to point of connection with the N., C. & St. L. Ry. either at Jackson, Tenn., or Lexington, Tenn., and arranging a trackage contract between the New Orleans, Mobile & Chicago and Nashville, Chattanooga & St. Louis between point of such connection and Paducah—this also with a view of constructing a branch from the New Orleans, Mobile & Chicago into New Orleans, possibly using the tracks of the L. & N. R. R. for a short distance for such purpose. This has cost the Louisville & Nashville Railroad Co. a considerable sum. The Cario & Thebes Railroad was finally leased to the St. Louis, Iron Mountain & Southern on basis of larger part of the cost and 4 per cent interest on the bonds. The total investment was about $1,741,000. The investment by the Louisville & Nashville Railroad Co. in the stock of the New Orleans, Mobile & Chicago Railroad amounting to a large sum will probably be a total loss, as the property is in the hands of a receiver and by foreclosure proceedings the stock will become of no value.

All of this was done in the interest of the N., C. & St. L. Ry., and by so doing the L. & N. R. R. has aided in creating a competing line with itself between East St. Louis and Nashville that has diverted from its line via Evansville a large amount of traffic that was formerly interchanged between the C., B. & Q. and L. & N., and while traffic moved via the L. & N. passes over its rails the entire distance, the N., C. & St. L. Ry. only gets the haul from the Ohio River, thus causing a much heavier loss in revenue to the L. & N. R. R. than the increase secured by the N., C. & St. L. Ry. The plan to create an effective line between Paducah and Mobile and New Orleans—it being the intention of the management, when so completed, to transfer such interests as it might have to the N., C. & St. L. Ry.—would have opened up a competing line against the L. & N., it having its own rails all the way from St. Louis via Evansville and Nashville to Mobile and New Orleans, etc.

The conclusion shows at least the intention of the management of the Louisville & Nashville Railroad Co. to in every way possible protect the interests of all the stockholders of the N., C. & St. L. Ry., even at a heavy loss to itself.

Question 9: Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dockyards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly and restricts competition and determines and fixes rates.

In answering this the commission devotes 20 pages of its printed report and includes, in addition to the information asked for relative to the Cumberland and Tennessee Rivers, the Green and Barren Rivers, and the Alabama River. It also discusses the question of railroad terminals and switching arrangements, or arrangements for interchanging traffic, which is before it in other proceedings.

It would make this statement much too long to undertake to analyze each of the allegations. Enormous records have already been created in proceedings and hearings before the commission and in the courts involving these terminal and interchange questions.

But the statement relative to the conditions in the Alabama and other rivers, including loans made by the Louisville & Nashville to Capt. N. A. Staples, which resulted in a loss of $41,562.12, requires attention.

Let me, however, digress first to say that two widely diverging points of view are held relative to the relations of transportation lines and their patrons.

One, which is very generally held by the public, is that transportation lines must compete, and by competition they mean that they must endeavor to destroy each other by reducing rates. That view is, as I have said, very widely held, and is held by many legislators, who introduce bills in legislative bodies, including Congress, in a futile and wholly wrong effort to enforce a continuation of destructive competition. Such view has been disseminated largely by mismanagement of transportation lines, rail as well as water. In the past so much such mismanagement has been indulged in that it became almost a matter of course, when two transportation lines, rail or water, were in competition, that they must indulge in mutual destruction by reducing rates. It was almost a certainty that when a new railroad was constructed that came in conflict with an existing line there was a war of rates. This was true also of water lines. It was easy in the olden days, when steamboat business was more important than it is now, when a boat line was prosperous, to put in another boat, which usually resulted in the bankruptcy of one or both. I will give some illustrations.

Mr. Locke. From there on to page 24 you put in yesterday.

Mr. Jouett. What point on page 24?

Mr. Locke. At the end of page 23.

Mr. Smith. Beginning at the top of page 24: As bearing on the conditions that existed in the earlier days, I will put in a copy of a letter which I wrote on February 7, 1875.

(The letter here referred to by the witness was referred to on yesterday as Exhibit E-1, and will be found in this record at pages 456 to 460, inclusive.)

Mr. Smith. The attitude of the commission in its comments upon the relations of the Louisville & Nashville Railroad Co. and the ports of Pensacola, Mobile, and New Orleans, in which it attempts to and does create a prejudice against the Louisville & Nashville Railroad Co. with the people of Mobile and New Orleans, does us a great wrong. It is true that the facilities for interchanging traffic between the Louisville & Nashville Railroad and ocean-going vessels are more elaborate and convenient at Pensacola than at either Mobile or New Orleans. Conditions are such that the Louisville & Nashville Railroad Co. can not successfully compete for much of the export traffic to New Orleans, the reason being that the L. & N. serves a territory midway between the Mississippi River and the Atlantic Ocean, and its line is so much longer and its gradients so unfavorable that it can not successfully compete for traffic north of the Ohio River, especially St. Louis, Chicago, etc., with the much more direct and shorter lines of the Illinois Central with its much more favorable gradients, and consequently much cheaper cost of transportation. For the export traffic east of the Mississippi and south of the Ohio it does undertake to compete, but in doing so it necessarily is in competition with the numerous ports of the Atlantic seaboard from Boston to Jacksonville. Nevertheless, it handles considerable traffic, especially tobacco, from Louisville, Owensboro, etc., via New Orleans.

In addition, all such traffic has, in a way, to pass by the ports of Pensacola and Mobile, the rail distance of the L. & N. R. R. to Pensacola being 14 miles less than to Mobile and 155 miles less than to New Orleans. The facilities for interchanging property between the L. & N. R. R. tracks and ocean-going vessels at Mobile are limited, but up to this time have been more than adequate for the traffic handled. At New Orleans the company must be content to use the facilities created by the city and other companies, it having but an exceedingly limited space on the river—370 feet—which will only accommodate one vessel, and that not a long one, and which the city has threatened to, and doubtless will, take from us by expropriation.

There are numerous errors in the answer of the commission to question No. 9; but as in the main they are not important, I do not deem it desirable to devote the necessary space to correcting them, but will call attention to errors in one page, which may be to some extent illustrative of others. The following is an extract from the report of the commission:

> The Louisville & Nashville does not hold title to much water-front property in Pensacola, yet it owns the only docks and wharves at that port suitable for berthing steamships engaged in export traffic. These facilities comprise three piers and one small wharf constructed into the bay.
>
> The Commandencia Street Wharf is a pier approximately 1,200 feet in length, with berth space in slips with water averaging 28 feet in depth on each side. This pier, utilized principally for loading cotton, tobacco, and general cargo, is double-decked, each deck being served by two tracks.
>
> The Tarragona Street Wharf consists of a pier approximately 800 feet long, with berthing space in slips in which the water averages 28 feet in depth on each side. The west side of this pier, used principally in loading cotton, tobacco, and general cargo, is double-decked, each deck being served by a single track. A warehouse is situated on the lower deck. On the east side of the pier five tracks are provided and utilized in loading naval stores, steel rails, iron, lumber, and other bulky commodities from cars direct to steamships.
>
> The Muscogee Dock is a coaling station constructed on a pier possibly 800 feet in length. This dock is the only depot for coaling steamships at Pensacola. The Jefferson Street Wharf, which is only partly owned by the Louisville & Nashville, is small and inadequate for the accommodation of large vessels. The Pensacola, St. Andrews & Gulf Steamship Co. owns a portion of this wharf, on which there has been constructed a shed for storing freight and which provides suitable berthing space for the steamer of that line. See in re Wharfage at Pensacola (27 I. C., 252). The Louisville & Nashville part of the wharf is occupied by storage tracks on which cargoes are held in cars pending delivery at the other wharves.
>
> The above-described properties comprise all the improvements held by the Louisville & Nashville at Pensacola. These docks have no adequate facilities for the storage or economical and expeditious handling of cargo; they are of ancient design. Their track arrangement is faulty, and they have few mechanical devices for handling cargo. Cars can not be economically placed upon the upper decks of the Commandencia and Taragonna Street wharves for unloading to steamers, owing to the inability of yard locomotives to move more than a few cars at a time up the incline and owing to the difficulty of replacing cars as they are unloaded with loaded cars. Finally, the warehouses on these docks afford insufficient storage facilities for cargo. The storage space of these warehouses, which comprise the entire facilities of that carrier at this port, is not in excess of 90,000 square feet. At Mobile the municipal dock contains 122,760 square feet, the Mobile & Ohio-Southern Railway piers 519,416 square feet, and the Turner-Hartwell docks 141,250 square feet, or an aggregate of 783,426 square feet. At New Orleans the State of Louisiana alone has constructed 3.7 miles of steel sheds, with a total area of 2,642,689 square feet.

The report of the commission also states that "Title to a stretch of 4,760 feet of water frontage is held by the Illinois Central Railroad and occupied by the Stuyvesant Docks. * * *

Of the four wharves carated by the Louisville & Nashville Railroad Co. at Pensacola—designated as Commendencia Street Wharf, Tarragona Street Wharf, Jefferson Street Wharf, and Muscogee Wharf—there is a docking space of 7,050 linear feet of 28 feet of water, 180 linear feet of 22 feet of water, and 1,055 linear feet of 13 feet of water, giving dockage space for a total of 19 vessels 375 feet long, each drawing 28 feet of water, and a total floor area of 560,000 square feet. I submit herewith a blue print showing the arrangement of three of the four wharves.

Mr. JOUETT. File that as Smith Exhibit 3.

(The blue print referred to was thereupon marked "Smith Exhibit No. 3," and is attached hereto and forwarded herewith.)

Mr. SMITH. It is believed that these are arranged so as to furnish facilities for interchange of traffic with seagoing vessels in a manner that is superior to any similar structures at any port on the Gulf, Atlantic coast, or the Great Lakes.

Question 10 relates to arrangements made from time to time between the Louisville & Nashville and other transportation lines to maintain established rates and secure movement by lines over which, in the main, it can be done to the best advantage, i. e., at least cost and for the best service of the patrons, all of which seems to have been proper and commendable. Numerous errors are contained in the statement, but do not seem to justify the space that would be involved in endeavoring to correct them. The gist of their conclusion is that competition has been restricted; and, running through the entire report, great stress is laid upon the matter of competition, and it is evident that by "competition" the commission really has in mind rate cutting and destruction of revenue by unregulated and demoralized competition. This, notwithstanding the commission is enforcing penalties against those who are responsible for making reduced rates, and against shippers or consignees for accepting reduced rates.

Question 11, relations of the Atlantic Coast Line and the Louisville & Nashville, while containing numerous errors, does not seem to call for comment.

Mr. JOUETT. I will not ask you about the pass matter now, Mr. Smith.

When the Louisville & Nashville Railroad was first built, what was its length?

Mr. FOLK. Do you mean mileage?

Mr. JOUETT. Its mileage.

Mr. SMITH. I assume that you refer to the original construction, what is known as the Louisville & Nashville Railroad extending from Louisville to Nashville, 185 miles. That was completed about the last of 1859 or early in 1860. At that time there was also a branch known as the Lebanon Branch, extending, perhaps, 30 or 40 miles from Lebanon Junction—or, I think it was 66 miles—to Louisville. There was a branch from Memphis Junction to Guthrie, the State line. Oh, about 275 miles, I should say.

Mr. JOUETT. That was the total length of its lines?

Mr. SMITH. Yes. Let me take that big sheet.

Mr. JOUETT. That is near enough.

Mr. SMITH. I can give you the length of the Louisville & Nashville proper that was operated by the Louisville & Nashville. It is given here.

Mr. JOUETT. Well, will you state——

Mr. SMITH. Just a moment. This perhaps gives it correctly. That was in 1860.

Chairman MEYER. Apparently, it is already on the statement now.

Mr. JOUETT. Yes. That is near enough, Mr. Smith.

Mr. SMITH. The mileage operated on June 30, 1861, was 268.2 miles.

Mr. JOUETT. What was the mileage operated when you became the executive head of the company?

Mr. SMITH. In June, 1882, the mileage operated, not in connection with the controlled lines, was 1,972 miles.

Mr. JOUETT. Will you state briefly and generally the method of procedure by which the mileage of the Louisville & Nashville Railroad has been gradually increased from the beginning?

Mr. SMITH. In 1860, what was known as the Memphis, Clarksville & Louisville Railroad, extending from Guthrie, a point of the Louisville & Nashville Railroad, to Paris, Tenn., was opened. There was another corporation known as the Memphis & Ohio Railroad, which was completed from Paris, Ky., to Memphis, Tenn., thus forming a through line. The Louisville & Nashville Railroad, with these two corporations, formed a through line between Louisville and Memphis, but I think they were operated as separate corporations. At any rate, in the year 1873 the mileage was 727 miles while for the year ending 1872 it was only 381. That is misleading. Well, the history, of course, can be correctly ascertained. At any rate, the Louisville & Nashville Railroad acquired both the Memphis, Clarksville & Louisville Railroad and the Memphis & Ohio Railroad. It also extended the Lebanon Branch about that time, or in the late sixties or in the early seventies, to Livingston, Ky., 140 miles from Louisville; and on the 1st of July, 1871, it leased the Nashville & Decatur Railroad, extending from Nashville to Decatur Junction. It acquired a partly constructed road and completed it between Decatur, Ala., and Montgomery, Ala., known as the South & North Alabama Railroad. I do not recall that any additional lines were constructed or acquired to any extent until 1879 or 1880, when the company was under the control of some reckless speculators, who extended it very rapidly. While they did it largely for their individual benefit, it resulted in creating, to a certain extent, the present system.

Under that management they acquired a line from St. Louis to Nashville, what is known as the Owensboro & Nashville Railroad from Owensboro to Montgomery and the New Orleans & Mobile Railroad from New Orleans to Mobile, and about July 1 they acquired what was known as the L., C. & L. Railroad, or the Louisville, Cincinnati & Lexington Railroad.

Those were the conditions when I became chief executor, and from that time on the work of construction, the investment in constructing new lines, was pressed vigorously. I ought to say, however, that the line from Livingston to Jellico, about 60 miles, was completed in 1872.

In about 1886 we entered upon the construction of a line from a place now called Corbin, Ky., up the Cumberland River, up and through the Cumberland Gap, to a point known now as Norton, Va. That, I think, was completed about 1889 or 1890.

We also entered upon the construction of a very extensive system of branch roads in the mineral district of Alabama; also acquiring and constructing considerable mileage through the agricultural districts, especially from Calera to Attalla and from Flomaton, Ala., to Selma, using some uncompleted roads. The mileage was partially constructed before the war. Within the past 10 or 15 years it has acquired and constructed considerable additional mileage in Kentucky, which work is not entirely completed. We are endeavoring to increase our facilities. We have expended large sums of money also in double-tracking or constructing additional track between a point north of Nashville and Birmingham, Ala., connecting there with a piece of double-track between Birmingham and Calera.

The mileage operated has therefore increased to 5,037 miles on June 30, 1915, which does not include the affiliated lines, like the Nashville, Chattanooga & St. Louis or lines owned and leased from other corporations; but includes lines actually organized by the corporation and the accounts of which are kept in the books of the Louisville & Nashville Railroad.

Mr. Jouett. The other lines to which you have referred are controlled by the Louisville & Nashville Railroad?

Mr. Smith. Some of them; yes. That is all set out in the annual report.

Mr. Jouett. Without going further into details, I want to ask you with reference to the long list of companies which, it was shown by the examination of Gov. Folk the other day, the Louisville & Nashville Railroad has acquired, and ask you to state briefly what those companies were. Do not name them, but give us the classes in which they fall. To make it a little clearer I will ask you if it is not a fact that a large number of those companies were organized by the Louisville & Nashville Railroad, built by the Louisville & Nashville Railroad, though under a different corporate name?

Mr. Smith. The list which was put in evidence the other day contained references to a good many pieces of road that I did not know we had. I do not recognize them at all. I do not know where the information came from. It seems to be a list showing in great detail where we run over a few miles or a few feet of track, etc. They are wholly immaterial, but most of the roads, or some of the roads named, were simple legal conveniences for getting authority to condemn property for the right of way, and some, as I stated yesterday, in order to keep the property from under the charter of the Louisville & Nashville Railroad, so that when the source of traffic was exhausted it could be taken up. But they are wholly short and unimportant roads. I think they are gradually being absorbed, the more important ones being absorbed into the Louisville & Nashville system, while they retain their power to exist as corporations for reasons that can be much more intelligently explained by the general counsel or the representatives of the legal department than by myself. I really do not appreciate why we retain a nominal organization for many of these corporations.

Mr. Jouett. Now, eliminating those lines which you say were constructed by the Louisville & Nashville Railroad under different corporate names, state generally the character of the other lines which go to make up your mileage; that is, the lines which have been acquired; I do not mean in detail, but just generally, something as to their size and importance.

Mr. Smith. Well, in acquiring and building lines, we have acquired important mileage, and it is used largely for the transportation of interstate traffic.

We have a line all the way from East St. Louis, through Nashville, to New Orleans. We have a line all the way from Louisville to New Orleans, from Louisville to Memphis, and a line from Louisville, via Knoxville, most of the way to Atlanta, using trackage rights to get into Atlanta. We also have a line all the way from Cincinnati to Atlanta, and we have built up as best we could an organization for moving property and persons between the various points served and through the territory served so as to give facilities equal to the traffic that has been secured. Under some conditions we can not always furnish transportation for all of the property that is offered. That condition exists now, to some extent, but in the main, I think, the reputation of the Louisville & Nashville Railroad for furnishing prompt and satisfactory service to its patrons is equal to that of any other road in that territory, certainly. At any rate, a good many, say, in Alabama, for instance, in the mineral district, that they much prefer to have their operations located on the tracks of the Louisville & Nashville, because they get better service than they have heretofore gotten from other lines.

In the main, I think we get on very harmoniously with our patrons in the communities that we serve directly. When it comes to competing with other lines for some kinds of traffic between points not on our line, but which may pass over our lines, we are, perhaps, at some disadvantage, especially in the passenger traffic, where, perhaps, we have not felt justified in incurring the enormous expense that would be required to furnish facilities in all cases equal to those of our competitors. For instance, on the Florida passenger traffic, which we do not consider is especially valuable, we run, say, one train per day between Cincinnati and Jacksonville and between Louisville and Jacksonville, against competing lines running three, at least during a part of the season. In that respect they are furnishing better service than we do, perhaps.

Mr. JOUETT. Now, I direct your attention to the lines which have been bought outright by the Louisville & Nashville Railroad, and I will ask you to state what sort of lines they were in the matter of service and general value and importance. Were those lines which you bought lines of any material value or importance in themselves? and in answering that question state what, in your opinion, has been the importance, if any, or benefit, if any, to the people living on those lines since they were taken over by the Louisville & Nashville Railroad.

Mr. SMITH. Take the present line between St. Louis and Nashville. When they were acquired they were separate corporations north of the Ohio River and south of the Ohio River. When they were acquired they had been through bankruptcy. It never was well constructed. It was constructed with little capital, and it devolved upon the Louisville & Nashville Railroad, in the promotion of its interest, to improve the road. At the time they were acquired there was no connection between Evansville and Henderson, except by boat transfer. The Louisville & Nashville Railroad constructed 12 miles of railroad and a bridge across the Ohio River, thus making a reasonably good through line, and we have continued to improve that line and are still spending money in improving that line. We have done a good deal toward reducing the grades and improving the alignment between Henderson and Nashville, and are now engaged in equipping the line with automatic electric block signals, etc. We have now a fairly good line.

We have recently acquired control of the Louisville, Henderson & St. Louis Railway, which was a derelict—that is, it had never been profitable and had been in the hands of receivers, being operated by the court. The track conditions were inferior. The Louisville & Nashville Railroad has advanced money to that company. It is still operated as a separate corporation. They have taken up the old 50-pound rails and substituted 80-pound rails, etc., to try to make it safe for handling the traffic comfortably.

We have bought lines like the Marietta & North Georgia, which is the line running over the hills originally from north Georgia. It was in a bankrupt condition. I do not know how many times it had been sold. The grades were changed and the line was extended to Knoxville. The Louisville & Nashville Railroad acquired it, but the only part of it that it has used is the bridge to Knoxville, across the Tennessee River, but that is too wide.

Mr. Jouett. That was the Atlanta, Knoxville & Northern when it was acquired?

Mr. Smith. Yes. We rebuilt the line entirely down as far as the point that is called Etowah. Finding that it was practically impossible to reconstruct the line from there to Marietta, Ga., to permit the transportation of property and persons at any reasonable cost, it was diverted to Cartersville, on the way to Atlanta, keeping west of the hills or mountains. We still operate the old line over the hills. There are valuable marble quarries there and there is quite an important industry—a copper smelting plant and manufacturing of sulphuric acid; so we may in time get something out of that road. We have had to get off that road just as quickly as we could, no matter which way, because the grades render it simply impossible to transport the property at any reasonable cost or safely.

We bought another abortion, known as the Richmond, Nicholasville, Irvine & Beattyville Railroad. We rebuilt some part of it along the Kentucky River, but, unfortunately, we have the worst part of the road to maintain. It will never be profitable. We would like to take up the rails, but we can not do it legally.

We built, at a very great expense, the connection between the road on the river and a point on our Cincinnati and Atlanta line at Winchester—at enormous expense.

We bought the Lexington & Eastern, another derelict, and extended it a great distance, something like 100 miles up into the territory on the north fork of the Kentucky River, into a valuable coal territory. We would like to abandon the track for a large part of the hundred miles that we built, but we can not legally take up the rails.

We bought the Kentucky Central Railroad. A part of that was a very old line. We have expended large sums of money improving that, double-tracking it for 100 miles from Covington to Winchester. We have a line over which, for 100 miles, we can move an unlimited amount of traffic, almost, at a reasonable cost of transportation expense. I think our maximum grade going with the traffic on the line is three-tenths of 1 per cent.

Mr. Jouett. That is the line from Cincinnati going south across the State of Kentucky?

Mr. Smith. Yes. I suppose one of our big engines can move 100 carloads over that 100 miles with 55 tons of coal in each card. Unfortunately, we have not a large mileage of that character, but we are trying to create some. You see, the Louisville & Nashville Railroad is located across the hills, up and down, and the expense of creating a line over which traffic can be moved profitably at a rate approved by the Interstate Commerce Commission is very, very great, and it is a question whether the traffic will go to a point where we can afford it or where it would pay any return or any satisfactory return upon the large investment which it would be necessary to make, to make those lines susceptible of having the traffic moved over them at a moderate cost, what would be called a modern railroad, built to move a large tonnage, a heavy tonnage.

Mr. JOUETT. Now, I direct your attention to those lines which the Louisville & Nashville Railroad has acquired, and will ask you to state what has been the effect, in your opinion, upon the general shipping public from the acquiring of them by the Louisville & Nashville Railroad and the incorporating of them into its system?

Mr. SMITH. It has been to very greatly improve the facilities furnished the patrons and the people along the line, undoubtedly. I think that will be conceded by all who are interested.

Mr. JOUETT. Is there not also a benefit in the matter of rates to have those lines incorporated into a regular system, rather than to have to pay two rates?

Mr. SMITH. Yes, of course. When rates between two or more short or independent lines are made on the combination of local rates, they soon become prohibitory. Originally—in fact, we might say since the war—the roads of which the Louisville & Nashville Railroad is now a part of the system were not operated for the transportation of through freight.

When I was the local agent of the Louisville & Nashville Railroad they had no through rates from Louisville via Nashville, Chattanooga, Atlanta, etc. These short roads down there did not want any through rates. They were able to take care of the local traffic. They were owned and controlled by people on the line, and they had no equipment, and when shipments were made they were transferred at each connecting point, transferred at Nashville on a shipment going to Atlanta or West Point. Say it was going to West Point, Ga., it was transferred at Nashville, transferred at Chattanooga, and transferred at Atlanta. At each point of intersection it was transferred, and there were sheds, etc., to facilitate that.

The Louisville & Nashville Railroad before the war was in a better financial condition than other roads in the South, because of the management, that had been able to keep control of it, while the other roads in that territory were abandoned largely or destroyed as a result of the war. The Louisville & Nashville Railroad undertook to inaugurate the transportation of through traffic between Louisville and that territory down in Georgia and Alabama and found that it could not well furnish all of the cars or the equipment required, and it induced, say, the Nashville & Chattanooga Railway or the Western & Atlantic Railroad, which was operated by the State, the Atlanta & West Point road, and the Georgia road, and, I think, a road known as the Macon & Western, extending from Atlanta to Macon, to form what was termed "The Green Line." That is, the cars were painted green; and the Louisville & Nashville Railroad induced those railroads to put in a certain number of cars. I think some put in 25, and I think, perhaps, the Louisville & Nashville Railroad put in two or three hundred. Those cars were allowed to go through. In that way we commenced to introduce the use of loading a car at Louisville and sending it to destination as far as Augusta, Ga., or Charleston. These roads did not keep any mileage of the cars, and on the question of adjusting the mileage or rental of the cars there was little difficulty. We created what was known as the Green Line Car Agency at Atlanta, and employed a man, who got junction reports, etc., and he made a statement of the mileage of the cars interchanged. From that system has grown the present conditions; and at this time I think the traffic between points on the Ohio River via the Louisville & Nashville Railroad, the Cincinnati, New Orleans & Texas Pacific, or the Southern Railway and connections is as good as in any part of the country that I know anything about.

The facilities for the transportation of passengers, giving due consideration to the amount of traffic, is, I believe, greatly in excess. I mean on the through-passenger traffic handled, it does not justify the expense of equipping and operating through trains. I am quite sure that the through service furnished by the Louisville & Nashville Railroad, with steel cars and dining cars, etc., is not remunerative. I do not believe that we receive as compensation for the handling of the traffic in a steel car and a dining car what it costs; and practically all of our net revenues from the transportation of through passengers and property, of interstate passengers and interstate property, is largely from the transportation of property.

Mr. JOUETT. Governor, will you have anything that you wish to ask him? I think we can finish in 20 minutes.

Mr. FOLK. Yes; we will want to ask him some questions.

Chairman MEYER. We will adjourn here until 2.15.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2.15 o'clock p. m.)

AFTER RECESS.

The hearing was resumed at 2.15 o'clock p. m.

Mr. MILTON H. SMITH, the witness on the stand at the time of taking the noon recess, resumed the stand, and having been previously duly sworn, was examined, and testified further, as follows:

Chairman MEYER. Proceed, Mr. Jouett.

Mr. JOUETT. Mr. Smith, you were asked yesterday about a certain conference between yourself and Mr. Spencer in regard to the acquisition of certain roads in the State. Will you state generally the character of those roads, and state what, if any, was the effect upon the public of the Southern's acquiring certain of them?

Mr. SMITH. As I have heretofore stated in this hearing, in giving evidence in this hearing, the more important of the railway lines now forming the Southern Railway System was at one time controlled by a corporation known as the Richmond & West Point Terminal Co., which controlled what is known as the Richmond & Danville Co., the East Tennessee, Virginia & Georgia and the Georgia Central System, I believe it was then known. That corporation became financially embarrassed, and with the companies which I have named, was placed in the control of the United States courts and operated by receivers for a time.

The Southern Railway corporation was created mainly, I think, by the banking firm of J. P. Morgan & Co. to take over the roads, or most of them, and put them in a financial condition to form them into common carriers, and, at the same time, organize in a way that they could take in additional roads if they wanted them—that is, their mortgage scheme provided for the issuance of additional bonds to be sold to acquire additional properties, etc. I, for the Louisville & Nashville Railroad Co., in looking over the situation, promptly concluded that the interests of the Louisville & Nashville Railroad Co. were not going to be unfavorably affected by such organization. On the contrary, I believed that the success of such an organization, ambitious as it was, would be beneficial to the Louisville & Nashville Railroad Co., because of reducing the number of authorities that would have to be dealt with in the securing and maintaining of rates for the transportation of persons and property.

In the territory covered were a great number of what may be termed "derelict roads," or local roads with little or no value; that is, roads of little or no value as going concerns, or organizations that could be operated at a profit, or operated so as to yield any return to the owners of the property. I thought the acquiring of such roads by the Southern Railway would be of benefit to the country at large, and would not unfavorably affect the interests of the Louisville & Nashville Railroad Co. I was therefore quite willing to cooperate with Mr. Samuel Spencer, who was then president of the Southern Railway, and who was placed in charge of putting the various railroads together and making a working organization and managing the same.

I do not know how it came about, but probably one or the other of us suggested a conference, and so we met at Kennesaw and discussed the question, and a memorandum was made of our discussion. I recollect that. I have not the slightest recollection of the correspondence that ensued of Pizaro and Cortez. I had no idea there was such correspondence in existence, and I think the result has proved the correctness of my conclusion.

The Louisville & Nashville Railroad was in no condition—the management had been trying to do so—to compete with the Southern Railway. It had little or no credit at that time. Its credit was very low. I think its 4 per cent bonds were probably selling at about 75 or 80 cents—something like that—and we were quite willing that the Southern Railway should acquire these various railroads. It did, in the main, and I am sure the conditions of those roads and of the Southern Railway to-day, which is one of the great railway systems of the country, operating about seven or eight thousand miles of railroad, I think, is proof that I, for the Louisville & Nashville Railroad Co., so far as I had control, made no mistake in cooperating with Mr. Spencer, as president of the Southern Railway Co., in creating the system which has been created.

I would like to call your attention to the fact that, for reasons satisfactory to them, they gave up or disposed of the control of what is now known as the Central of Georgia.

Mr. Jouett. What, in your opinion, was the effect upon the shippers on those various lines of this consolidation into the Southern Railway?

Mr. Smith. The patrons of those lines have been greatly benefited. They have now infinitely better service than they had before the Southern Railway was organized.

Mr. JOUETT. I believe you have stated that the Louisville & Nashville Railroad Co. was not in condition at that time to compete with the Southern in the matter of acquiring these lines, and therefore you entered into this discussion with him about it?

Mr. SMITH. Yes, sir.

Mr. JOUETT. Did you actually acquire any of those lines?

Mr. SMITH. No, sir. In reading over the correspondence which was incorporated into the record yesterday, some of them I don't think I ever heard of. I don't know where they are located. But we have in the past few years acquired two or three roads in Kentucky (I think that seems to have been discussed), like the Richmond, Nicholasville, Irvine & Beattyville road—a worthless piece of property to the then owners—and the Lexington & Eastern. I do not think we acquired any of the roads which were then in existence outside of the roads I have mentioned in Kentucky.

Mr. JOUETT. I believe you did acquire the Marietta & Northern in 1905.

Mr. SMITH. The Marietta & Northern?

Mr. JOUETT. Yes.

Mr. SMITH. Yes, sir; we did acquire that in the creation of a more direct line from Cincinnati to Atlanta, but we acquired it because it was there, and, I may say, in the way of our building another road. We did not want to parallel that road, worthless as it was, and, as I have already stated, we made no use of it, and are making practically no use of it, as an addition to the through line now.

Mr. JOUETT. I now wish to direct your attention to the Nashville, Chattanooga & St. Louis Railway, and will ask you to state to the commission something as to the extent, something as to the mileage and general condition of that road when the majority of its stock was acquired by the Louisville & Nashville Railroad Co. in 1880, and tell something of its growth and development after that time.

Mr. SMITH. You mean from about the time the Louisville & Nashville Railroad Co. acquired the majority of the stock?

Mr. JOUETT. Yes, sir.

Mr. SMITH. At that time the Nashville, Chattanooga & St. Louis Railway Co. owned and operated a line from Hickman, Ky., to Chattanooga, with some branches in Tennessee.

At that time the Western & Atlantic was controlled by a separate corporation, a lessee company, of which, I think, the Louisville & Nashville Railroad Co. had acquired a majority of the stock. The Louisville & Nashville Railroad Co. had acquired a majority of the stock of the lessee company, I think. When the lease expired negotiations were had with the State of Georgia, which resulted in the Western & Atlantic road being leased by the Nashville, Chattanooga & St. Louis Railway Co., which added an important trunk line, as it were, and as it was and is, for the Nashville, Chattanooga & St. Louis Railway Co., with a length of about 137 miles, with no important branches.

The Nashville, Chattanooga & St. Louis Railway Co. afterwards acquired the Rome road, a short road extending from Kingston, Ga., to Rome, Ga., which it still owns. Since that the most important acquisition has been the leasing from the Louisville & Nashville Railroad Co. of the Paducah & Memphis division. I do not recall any other important additions to the mileage. It is now operating, I think, about 1,200 miles of road, and it is joining the C., B. & Q. in building a line from Paducah, Ky., to Metropolis, Ill., including a double-track bridge across the Ohio River. It has always been very carefully managed or operated, and has given excellent service, and I think satisfactory service, to its patrons, or the people along the line, and I think the management of the company has been what might be termed popular with the patrons. They are always very accommodating in trying to do what they can to secure the cooperation of their local patronage.

Chairman Meyer. When you spoke of the line from Paducah, Ky., to Metropolis, Ill., I understood you to say "including a double-track bridge." Do you mean a bridge? Isn't it a ferry?

Mr. Smith. They are working a ferry now, but they are building a bridge at the present time.

Chairman Meyer. They are building a bridge? You mean it is not yet in operation?

Mr. Smith. No, sir; it is not yet in operation. It may possibly be completed this year. They are progressing much faster with the construction than they anticipated. When they commenced work they did not expect to complete it until some time next year, but it is possible now that they may complete it this year. Fortunately they got in their contracts for bridge material during the depression, and they acquired it at a very much less cost than it could be obtained for now.

Mr. Jouett. What would you say as to the general physical condition of the Nashville, Chattanooga & St. Louis Railway throughout?

Mr. Smith. It is very good, almost the best. That has been a hobby with J. W. Thomas, the president, for many years, and with his son, J. W. Thomas, jr., who succeeded him as president. They took a great interest in maintaining their track, and in putting in good condition all of the structures along the line.

Mr. Jouett. Were they among the minority stockholders?

Mr. Smith. Were they among the minority stockholders?

Mr. Jouett. Yes; were they among the minority stockholders?

Mr. Smith. I doubt whether they own much stock. They probably own some, enough to qualify them as directors. People who work for a living and who operate these roads are usually not men of wealth.

May I just add an incident? In 1884, when the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co. both came very near being placed in charge of receivers by the courts, as they gradually emerged from the depression, the board of directors of the Louisville & Nashville Railroad Co. passed a resolution directing that the stock of the Louisville & Nashville Railroad Co. be voted for M. H. Smith as president, and I was given the proxies. After the convening of the meeting of stockholders, on due consideration I believed it was for the best interests of all that Mr. Thomas be made president instead of myself, and I voted for him and made him president. The board of directors of the Louisville & Nashville Railroad Co. acquiesced in the action taken. That is merely incidental. Of course, you can't tell, but apparently the management of the Louisville & Nashville Railroad Co. has made a mistake or an error in not acquiring more, or all, of the stock and incorporating the Nashville, Chattanooga & St. Louis Railway Co. into the Louisville & Nashville Railroad System, by controlling all of the stock, or incorporating it into the Louisville & Nashville System by lease. Nevertheless, that is mere speculation. Had that been done, which could have been legally done, and perhaps could be legally done now, this question or this agitation or disintegration probably would not have been had.

Mr. **JOUETT.** Do you know whether this agitation which you have referred to emanates from any of the stockholders of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. **SMITH.** None that I know of.

Mr. **JOUETT.** What is the attitude of the minority stockholders toward the methods by which this road has been managed up to this time?

Mr. **SMITH.** There has been no contention that I know of, except in one or two instances. The lease of the Paducah & Memphis division of the Louisville & Nashville Railroad was opposed by Mr. Rogers, who was quite a large stockholder. I think he owned about $1,000,000 par value of the stock. I don't think there is any question but what he was trying in that way to force the Louisville & Nashville Railroad Co. to buy his stock, paying more than the current market value. However, the result was that he died and willed his property, including this stock, to the Metropolitan Museum, I believe, or something of that kind. Then the Louisville & Nashville Railroad Co. bought the stock from the museum, and that trouble was eliminated. Nevertheless, he was in the minority, and while he endeavored to make some trouble, and gave one or two lawyers in Nashville some employment, and, I believe, brought one or two from Chicago, he did no serious harm or made no serious trouble. That is the only contention I recall that there ever has been among the stockholders.

Mr. **JOUETT.** When was that?

Mr. **SMITH.** I do not recall the exact date.

Mr. **STONE.** Fifteen or twenty years ago.

Mr. **SMITH.** I think I can get it right here, though. From the date of the mortgage of the Paducah & Memphis division—I think that was 1905 or 1906.

Mr. **JOUETT.** What was the value of the Nashville, Chattanooga & St. Louis Railway Co.'s stock at the time the Louisville & Nashville Railroad Co. acquired a majority interest?

Senator **LEA.** I think that was in 1895 instead of 1905.

Mr. **JOUETT.** This last thing?

Senator **LEA.** Yes.

Mr. **JOUETT.** I think so, too.

Mr. **SMITH.** I think I can give the date very nearly.

Senator **LEA.** It was in December, 1895, I believe.

Mr. **SMITH.** I think I can get it in a moment.

Mr. **JOUETT.** Mr. Smith, before you go ahead there, are you not mistaken about that being 1905? Wasn't it 1895, that Rogers incident?

Mr. **SMITH.** It probably was. I think it was a 50-year mortgage, and that the mortgage matured in 1946.

Mr. **JOUETT.** 1895 is right, then.

Mr. SMITH. Yes, sir. The purchase of stock was during an inflated period, when everything was out of sight. It was during the boom of 1879 and 1880. We seem to have purchased 134,160 shares, par value $25 each, for which we paid $4,006,387.50. We seem to have bought that stock for about one twenty. That was in 1880. In 1884 the stock sold as low as 25 cents, and the stock of the Louisville & Nashville Railroad Co. sold for even less in large blocks to our friends who came to our rescue.

Mr. JOUETT. What is the market price of the stock of the two roads, now, approximately?

Mr. SMITH. I would have to quote from the Financial Chronicle. It can be gotten if you want it put in. I don't know what it is. I do not pay any attention to the stock list.

Mr. JOUETT. The stock of the Nashville, Chattanooga & St. Louis Railway Co. is selling for a greater price than the stock of the Louisville & Nashville Railroad Co. right now, is it not?

Mr. SMITH. I have not seen any stock quotations lately. The Nashville, Chattanooga & St. Louis Railway stock was selling at about 140, but that was some time ago.

Mr. JOUETT. And that of the Louisville & Nashville Railroad is around 125, is it not?

Mr. SMITH. Somewhere from 120 to 125. It is all a matter of record.

Mr. JOUETT. Are there certain individuals in Nashville, and elsewhere in Tennessee, who have substantial holdings in the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. SMITH. Yes. There is one quite large stockholder in Nashville, considering the fact that there are only about four or five millions of stock outstanding, that is, four or five millions of par value of stock of the Nashville, Chattanooga & St. Louis Railway Co. that is not owned by the Louisville & Nashville Railroad Co. I think of the $16,000,000, the Louisville & Nashville Railroad Co. owns somewhere between $11,000,000 and $12,000,000.

Mr. JOUETT. Are these minority stockholders represented upon the board of directors?

Mr. SMITH. Yes.

Mr. JOUETT. Do you know their attitude toward the management and their opinion of the management of the company?

Mr. SMITH. They participate in the management.

Mr. JOUETT. Do you know whether they are satisfied and pleased?

Mr. SMITH. If they are not satisfied they are in a position to object or criticise.

Mr. JOUETT. Do you know that they are pleased and that they do not object?

Mr. SMITH. As far as I know, I think they are. They are pleased with their own management.

Mr. FOLK. Pleased with who—Mr. Smith or somebody else?

Mr. SMITH. With their own management of the Nashville, Chattanooga & St. Louis Railway.

Mr. JOUETT. The Louisville & Nashville Railroad is distinctly a north and south line and the Nashville, Chattanooga & St. Louis Railway distinctly an east and west line, are they not?

Mr. SMITH. That construction may be put upon the location. That is approximately correct.

Mr. JOUETT. I will ask you to state what, in your opinion, has been the effect upon the shipping public of the Louisville & Nashville Railroad Co.'s acquisition of a majority of this stock of the Nashville, Chattanooga & St. Louis Railway Co.

Mr. SMITH. The Nashville, Chattanooga & St. Louis Railway Co. does not know much about the Louisville & Nashville Railroad Co. They are not in any way interested in the Louisville & Nashville Railroad Co. They look to the Nashville, Chattanooga & St. Louis Railway Co. to cure any troubles or to listen to any complaint they have to make. They do not come to the Louisville & Nashville Railroad Co. They do not come to the management of the Louisville & Nashville Railroad Co.

Mr. JOUETT. Are they not benefited, however, indirectly by the improvement in the Nashville, Chattanooga & St. Louis Railway, due to the assistance it has received from the Louisville & Nashville Railroad Co.?

Mr. SMITH. I don't know. That is a speculative proposition. Had not the Louisville & Nashville Railroad Co. acquired ownership of stock in the Nashville, Chattanooga & St. Louis Railway Co. the road might have continued to be prosperous. It does not actually follow that had the Louisville & Nashville Railroad Co. not acquired it the road would have been mismanaged. I would not like to say that. That is something we do not know and can not know anything about.

Mr. JOUETT. Mr. Smith, unless there is some statement you wish to make that I have not covered, I do not care to ask you anything further at this time. Oh, I believe I will ask you to state generally wherein you think the traffic arrangement between the two companies is an advantage to the public as well as the railroads. You have already testified about it to a certain extent. If you desire to make any further statement about that, you are at perfect liberty to do so.

Mr. SMITH. I do not see how I can say anything more upon that subject than I have said. Undoubtedly the communities served by the various railroads are benefited by an orderly conduct of the traffic affairs of the corporation serving them. When such affairs were not conducted in an orderly way the business of the country was continually disturbed by fluctuations, and the large shipper, perhaps the more active shipper, was securing advantages over his competitor which created discontent, etc., and finally resulted in the creation of the Interstate Commission, and various other State commissions, that undertook to protect the patrons of the various corporations or the people from such irregularities. Therefore any arrangement between one or more railway corporations that results in stabilizing rates or maintaining reasonable rates is beneficial and in every way preferable and far more desirable than the chaotic conditions which existed for so many years.

Mr. JOUETT. That is all. Gov. Folk, that is all I care to ask Mr. Smith.

Mr. FOLK. Mr. Smith, during your term as president of the Louisville & Nashville Railroad Co. that carrier has increased its mileage and has become more and more prosperous, has it?

Mr. SMITH. It has increased its mileage, but I will not say it has become more prosperous.

Mr. FOLK. You said at one time the stock was 25 cents, and now it is $125?

Mr. JOUETT. $135.

Mr. SMITH. It has been as much as $160, I believe.

Mr. FOLK. During all this time the legislatures of various States through which you run were meeting and Congress was in action from time to time and government by the people reigned, did it?

Mr. SMITH. I think you can answer that yourself, Governor.

Mr. FOLK. You spoke of legislative bodies being a menace, and in action a calamity, yet you have prospered under that system of government?

Mr. SMITH. In spite of all the difficulties, we have struggled to overcome them.

Now, as to that question of overlegislation, that opinion is held by a great many people. It is almost unanimous, I think. It is almost the unanimous opinion of those who have given it any consideration, I think, that there is overlegislation. I think I recall some very wise remarks of a very noted lawyer and statesman, Mr. Elihu Root, upon that subject.

Mr. FOLK. What was that, the "invisible government" speech?

Mr. SMITH. About overlegislation—too many laws. I think most lawyers are of that opinion, although it tends largely to increase their business, yet it also largely increases their expenditures for law books, and they have to hire a lot of law clerks to study the books for them.

Mr. FOLK. You read us a letter this morning which you wrote to Mr. Vanderbilt urging the necessity for some sort of regulation or agreement among the railroads in order to prevent their destroying themselves by the giving of rebates and things of that character.

Mr. STONE. What is your question, Governor?

Mr. FOLK. I was asking him about a letter that he wrote to Mr. Vanderbilt.

Mr. SMITH. You say I read that letter?

Mr. FOLK. You read that letter, did you not?

Mr. SMITH. Yes.

Mr. FOLK. Later the act to regulate commerce was passed, and it gave that regulation on the part of the public that you sought for the railroads to give themselves, didn't it?

Mr. SMITH. I think I have stated repeatedly that the maladministration of the traffic affairs of the railways, and especially of the important lines between the Atlantic seaboard and the Mississippi River, had much to do with creating discontent that resulted in the enactment of the act to regulate commerce, which originally did not, however, give the commission power to adjust rates, but which responsibility and duty has been devolved upon them since.

The introduction of that letter, which happened to be preserved almost by accident and which was brought to my attention some little time ago, was merely to emphasize the fact that I have been repeating here in almost every conceivable form I could think of, namely, that I have striven, ever since I have had anything to do with the traffic affairs of railroads, since, we will say, 1869, to secure the adoption and maintenance of rates. I strove for years and years to induce the representatives of the railways to do that. I want to emphasize that in contradistinction to the meaning put upon the word "competitor" by most people, which is "a war of rates," "cutting rates," "reduction of rates," in all sorts and in all manner of ways. Undoubtedly the present condition of the enforcement of duly authorized rates for the transportation of persons and property by the Interstate Commerce Commission is the only thing that prevents the railways engaging in more or less of that sort of business now, if they were free to do it, and the almost impossibility of men in charge of traffic or representatives in charge of traffic affairs of railways agreeing to maintain rates. With the constant efforts and schemes, etc., of the shippers, and especially the large shippers, it seems to be impossible to do that, although the conditions now, of course, are much more favorable for that being done than at the time that letter was written, which was in 1875. In those days it is almost incomprehensible the mismanagement of the railway traffic affairs of the lines, and especially those operating between the North Atlantic seaboard and the Mississippi River.

Mr. FOLK. When you spoke of rates being maintained by the orders of the Interstate Commerce Commission, you meant to refer to the provision of the act to regulate commerce requiring the carriers to publish their rates, did you not?

Mr. SMITH. The requirement to maintain rates.

Mr. FOLK. To publish and maintain the rates so published?

Mr. SMITH. To punish the carrier, the shipper, or consignee that violates the provision or does not maintain rates. The shipper is penalized for accepting a reduced rate under the law. The difficulty of adopting and maintaining rates under the supervision of the Interstate Commerce Commission is greatly enhanced by the power developed upon the numerous State railway commissions. Not all State Railway commissions now have the power to fix intrastate rates, but a number of them do, and through various influences, sometimes political and sometimes personal ambition, etc., they undertake to make rates under their control so as to unduly favor the people who use those intrastate rates. That power has been used, and is being used now to some extent, to interfere with the adoption and maintenance of interstate rates. That, I think, is evidenced somewhat in one or two of those punctures which I read yesterday with reference to Alabama.

Mr. FOLK. You favor control by one master instead of by many masters, do you?

Mr. SMITH. I think that follows. You have 48 or 49 bodies making rates that overlap and conflict, which renders the maintenance of reasonable and consistent rates extremely difficult.

Mr. FOLK. In your letter to Mr. Vanderbilt you spoke of large sums being given by different railroads to their freight agents to pay as rebates to shippers. That, of course, was the custom at that time, was it not?

Mr. SMITH. I did not say "large sums," I think. What I had in mind, when I wrote that letter, was the employment by representatives of two or three different lines having agents at Memphis, that in the end came back onto the New York Central; that is, the giving of them a commission of 25 cents per bale. That resulted in two or three agents receiving 25 cents per bale commission on

1,000 bales of cotton, which would be $250. As they were cutting against each other, and each one cut something off the New York Central, there was the folly of the New York Central having an organization where three or four agents were cutting against each other and each one taking something off the revenue of the New York Central road. I think that is what I had in mind. But, as I have already said, I was only trying to use that as proof that my efforts to induce representatives of the carriers to adopt and maintain reasonable rates have been continuous from the time I was placed in charge of the freight traffic affairs of the Louisville & Nashville Railroad Co. in 1869. It is almost an immaterial point, but it is something that I have been, throughout all of this hearing, trying to emphasize. I do that because running through all the proceedings is at least the intimation that because the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway Co. are not cutting rates with each other, they have not been competing: that because the Lousiville & Nashville Railway Co. or any other southern carrier or railway company enters into an agreement to maintain rates and does maintain them, under the provisions of the Interstate Commerce Commission, they are not competing. A great many people still assume, sometimes unconsciously, I think, that if you do not cut a rate, you are not competing.

Mr. **Folk.** This practice of rebating, to which you have referred, no longer exists or obtains, does it?

Mr. **Smith.** I think not. I am not going, at my time of life, to take the risk of being put into the penitentiary for cutting rates.

Mr. **Folk.** The act to regulate commerce stopped that practice of favoring one shipper over another shipper, through rebates, did it not?

Mr. **Smith.** I think it has; yes, almost entirely. I think the commission, in their reports, admit that, or the individual members of the commission have admitted it.

Mr. **Folk.** And the act to regulate commerce, in that respect, has your entire approval, has it?

Mr. **Smith.** It certainly has, and in many other respects as well.

Chairman **Meyer.** You might make your reference to the various annual reports to Congress, in which various lists of concessions, etc., are enumerated, so that the whole thing still appears, at least occasionally, in a new garb.

Mr. **Folk.** Do you know, Mr. Smith, how rebating is practiced now, if at all?

Mr. **Smith.** It is not practiced.

Mr. **Folk.** By your railroad?

Mr. **Smith.** It is not practiced by the Louisville & Nashville Railroad Co., I am quite sure, and I do not think it is by any other.

Mr. **Folk.** By giving switching privileges and things of that nature?

Mr. **Smith.** I do not think it is. That is watched pretty closely.

Mr. **Folk.** In answer to Mr. Jouett you referred to several roads mentioned in the Pizaro conference, or the Pizaro-Cortez conference, and referred to in the Pizaro-Cortez letters. You did not, however, mention the Tennessee Midland, which is one of the roads referred to in the Pizaro letters. That was afterwards acquired, was it not?

Mr. SMITH. I haven't the slightest recollection of ever having written or having received any of those Pizaro-Cortez letters.

Mr. FOLK. You know about Pizaro?

Mr. SMITH. That letter was written in 1894, wasn't it?

Mr. FOLK. 1896.

Mr. SMITH. The letter was written in 1896?

Mr. FOLK. The conference was in 1894 and the letter was written in 1896.

Mr. SMITH. I think we acquired the Tennessee Midland, the Paducah & Memphis division, in 1895 or 1896. I haven't got the exact date, but I am assuming they were 50-year bonds, and they expire in 1946. That would make the date of issue 1896, wouldn't it, and therefore the Tennessee Midland had already been acquired by the Louisville & Nashville Railroad Co. when that letter was written.

Mr. FOLK. In this Pizaro letter of February 22, 1896, you state: "The Paducah, Tennessee & Alabama and Tennessee Midland Railroads have been disposed of as anticipated."

Mr. SMITH. Yes, sir.

Mr. FOLK. That is in accordance with the conference?

Mr. SMITH. If that was a correct statement, I assume it had already been acquired by the Louisville & Nashville Railroad Co.

Mr. FOLK. You also state:

> The Louisville & Nashville will not compete for the control of the Memphis & Charleston Road.

Mr. SMITH. No; we never wanted that. That is not a road that would add to the traffic of the Louisville & Nashville Railroad for interchange traffic. It crosses our line at Decatur, and that is practically the only contact we have with it.

Mr. FOLK. This Pizaro letter, dated February 22, 1896, also states:

> The Louisville & Nashville will not compete for the control of the Birmingham, Sheffield & Tennessee River Railroad, provided you will acquire it.

Did it compete for the control?

Mr. SMITH. The Birmingham what?

Mr. FOLK. The Birmingham, Sheffield & Tennessee River Railroad.

Mr. SMITH. The Birmingham, Sheffield & Tennessee River Railroad?

Mr. FOLK. Yes.

Mr. SMITH. That must be the road running from Tuscumbia to Parish, I think.

Mr. FOLK. The rest of that sentence reads as follows:

> Provided you will acquire it, should it become necessary to do so, to prevent its extension into Birmingham, or will not permit it to get into a position where it may become a dsturber.

Mr. SMITH. The Southern Railway controls that road. I do not know that it has been incorporated into the Southern Railway System, but it owns or controls it.

Mr. FOLK. That statement was a correct statement of facts in this letter, was it?

Mr. SMITH. I think it was.

Mr. FOLK. Then Mr. Pizaro further says——

Mr. SMITH (interposing). Who is Pizaro?

Mr. FOLK. This letter is signed by Milton H. Smith, addressed to Samuel Spencer.

Mr. SMITH. I know; but was I Pizaro or Cortez there?

Mr. FOLK. You were Pizaro, were you not?

Mr. SMITH. All right. I never heard of those letters. I never saw them, I never opened them, and I don't know anything about them.

Mr. FOLK. But you knew of the name Pizaro, didn't you?

Mr. SMITH. No, sir; I didn't know of the name Pizaro.

Mr. FOLK. You never heard of Pizaro?

Mr. SMITH. I don't think it is worth while wasting time here about that, but all I recall about Pizaro and Cortez in connection with this matter is that a man by the name of Arthur Carey, who was president of the Lexington & Eastern Railway when we purchased it, and who is still living in Lexington, mentioned or called to my attention the fact that Mr. George N. Davie, an attorney at Louisville, had stated in some court preceeding or made some reference to the matter of—he has always been an attorney against the Louisville & Nashville Railroad Co.—Mr. Spencer and Mr. Smith being Cortez and Pizaro, and one taking South America and the other taking North America. That is all I recollect about it. He must have taken up that foolish joke and put it on paper. I don't know what business you would have with it anyhow. That is a personal matter. There ought to be some way of punishing you for robbing the mails, I think.

Mr. FOLK. That relates to railroad affairs, Mr. Smith—division of territory.

Mr. SMITH. No.

Mr. FOLK. In this supposed letter from Mr. Spencer to you, following this conference at Kenesaw, Ga., the statement is made in there—

> That neither the Louisville & Nashville nor the Southern shall acquire lines in the territory of the other, and that lines connecting with or touching one and not the other shall be regarded as in the territory of the one which they connect or touch.

Was that agreement carried out?

Mr. SMITH. That sort of stuff did very well for the time simply to pass away the time, but practically no attention was paid to it. Since about 1901, I think, or 1902, there was antagonism between Pizaro and Cortez. They did not get along together at all, but no attention was ever paid to that in acquiring or disposing of roads, and I don't think anyone ever thought of it. Pizaro and Cortez seem to have amused themselves somewhat with it, if those letters are a correct copy of correspondence which was actually had, of which I have no recollection whatever.

Mr. FOLK. Has there been any variation from the plan set forth in those letters?

Mr. SMITH. No attention was ever paid to them—to the plan.

Mr. FOLK. Or from the plan set out in the conference between you and Mr. Spencer at Kenesaw?

Mr. SMITH. No attention was ever given to it.

Mr. FOLK. Who arranged that conference?

Mr. SMITH. I don't know. I may have done it. Mr. Spencer and I had been quite friendly for a number of years, and had been associated together in the operation of the Baltimore & Ohio Railroad.

Mr. Folk. Can you think of any particular or in what particular your arrangement with Mr. Spencer in reference to the division of territory was departed from?

Mr. Smith. Division of territory, you say?

Mr. Folk. Yes.

Mr. Smith. You mean in the acquiring of roads?

Mr. Folk. In this Cortez-Pizaro arrangement.

Mr. Smith. The Louisville & Nashville did not acquire any of the road. Really the only thing covered by that memorandum in which the Louisville & Nashville Railroad Co. did have a direct interest was the line between Nashville and Knoxville, which we never acquired. I believe we were to acquire part of it. Under that arrangement we were to acquire that part from Lebanon to Harriman—there was another name for that, but it was near Harriman, anyway—and to cooperate together to form a through line between Nashville and Knoxville that would be shorter than the line via Chattanooga.

Mr. Folk. In this conference with Mr. Spencer at Kenesaw you stated:

> There remains in the territory north of south boundary Tennessee line, the P. T. & A., the Tennessee Midland, Decatur, Chesapeake & New Orleans, the Chesapeake & Nashville, and the Nashville & Knoxville roads, with what little work has been done on the Tennessee Central Railroad, which, if constructed, would be an extension of the Nashville & Knoxville Railway to point of connection at least with your line at Harriman Junction or Oakdale. Perhaps we may as well consider the Birmingham, Sheffield & Tennessee River road at the same time. What do you think ought to be done with the properties enumerated by one or both corporations? If they are to be allowed to fall where they belong, where should they go and in whose interests should they be controlled?

Were those roads finally disposed of in accordance with that conference with Mr. Spencer of the Southern?

Mr. Smith. The P. T. & A. and the Tennessee Midland, that was in 1894, was it?

Mr. Folk. That was in 1894; yes, sir.

Mr. Smith. The P. T. & A. and the Tennessee Midland seem to have been acquired by the Louisville & Nashville Railroad Co. in 1895 or 1896, a year or two after that.

Mr. Folk. In accordance with this suggestion here?

Mr. Smith. Those lines were of no possible use to the Southern Railway. They had to go somewhere, and they couldn't go anywhere else than to the Louisville & Nashville Railroad Co. or possibly the Illinois Central.

Mr. Folk. Or the C., H. & D., possibly.

Mr. Smith. Not west Tennessee. These lines are in west Tennessee. The C., H. & D. was a possible competitor for the Cincinnati Southern, the A. G. S., or what is known as the Erlanger System.

Mr. Folk. Mr. Spencer, in answer to your suggestion, said at that conference:

> You are talking about railroads now that I know very little about; but to go back for a moment. We will assume for the purpose of this conversation that the Erlanger System, so called, may get into our hands. If not, I assume it will go into the hands of the C., H. & D. Railway, and I assume that the L. & N. would as soon see it go into our hands as into the hands of that company. As regards the Memphis & Charleston, for the purposes of this conference, I am willing to assume that it may go into our system.

Mr. SMITH. It could not go anywhere else. The Louisville & Nashville Railroad Co. could not lease the Erlanger System. They could not possibly make any use of the Memphis & Charleston.

Mr. FOLK. Mr. Spencer continues:

> As to the Mobile & Birmingham road, so far as I can see, there is no possiblity of its going into our system.

Mr. SMITH. They did acquire it. The Southern Railway did acquire it.

Mr. FOLK. Thereupon you stated to Mr. Spencer:

> Well, one word as to what you said to the effect that you would assume that we would as soon you have the Erlanger System as the C., H. & D. In that I think you are mistaken. I think we would prefer to have the C., H. & D. or any other independent company control these roads, for the reason that you, controlling, as I understand you will, a large system of roads south of the Chattanooga line, would, if you had no direct connection north or west of that point, naturally occupy a neutral position; that is, it would not be for your interest to exclude us from competing for traffic in the southeastern territory over lines controlled by you, or it would not be for your interest to decline to interchange traffic with us, while, if your own lines extending directly to the Ohio and Mississippi Rivers, your interests will appear to be at least promoted by controlling the traffic to the end of your lines and from the end of your lines, while if the Erlanger System is controlled by an independent corporation, we would still be in a position to compete for traffic going to and from Chattanooga, south and southeast of Chattanooga, upon equal terms; nevertheless I say I have assumed that you would probably control those properties, and that you will control the roads now controlled and owned by the Central Railroad of Georgia.

Do you recall that statement?

Mr. SMITH. You recall it to me by reading it.

Mr. FOLK. After it has been read to you, do you recall it?

Mr. SMITH. I don't think there is anything that requires any discussion upon that point. It is evident, if the Southern Railway was going north of Chattanooga, it would have interchanged traffic with us or the Nashville, Chattanooga & St. Louis Railroad; and if they had line north of that, they would want the long haul, and they did get the long haul.

Mr. FOLK. You have read over this typewritten report of this conference between yourself and Mr. Spencer, haven't you?

Mr. SMITH. I went over it hurriedly yesterday.

Mr. FOLK. Did you find anything in it to be incorrect, or can you point out anything in it that is incorrect?

Mr. SMITH. It is mere speculation, the whole thing. What was proposed and what actually happened varies greatly, of course.

Mr. FOLK. As a report of the conference between you gentlemen, however, as to what took place at that time, it is, so far as you know, a correct report, is it?

Mr. SMITH. I assume that it is. We may assume that it is; yes, sir.

Mr. FOLK. Can you point out any statement of fact in those letters that was not correct at the time those letters were written?

Mr. SMITH. I do not think it is worth while for me to go over that long communication for the purpose of trying to find some technical errors. I will admit it is correct as you read it.

Mr. FOLK. You admit it is correct as read?

Mr. SMITH. Yes; to save time. It is not a matter of any importance whatever so far as I can see.

Mr. **Folk**. Mr. Smith, why does the Louisville & Nashville Railroad Co. hold this stock of the Nashville, Chattanooga & St. Louis Railway Co. if by doing so it does not restrict the competition that would otherwise result from the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. **Smith**. They are very glad to get dividends, for one thing, as an investment.

Mr. **Folk**. How long has it been paying dividends?

Mr. **Smith**. It seems to have been paying dividends ever since we have had it. I haven't got the total. The average dividend, however, has been 3.72 per cent per annum, according to this statement.

Mr. **Folk**. I show you here, Mr. Smith——

Mr. **Smith** (interposing). It has been paying for the last few years, until 1915, 7 per cent per annum. I think in 1914–15, it was 5 per cent, and I think it is now on a 6 per cent basis.

Mr. **Folk**. I show you here a copy of a report of H. Victor Newcomb in reference to the acquisition of the Nashville, Chattanooga & St. Louis Railway Co., in which he states, among other things:

> The aggressive and antagonistic policy pursued by the Nashville, Chattanooga & St. Louis Railway Co.'s management forced your board to seek the control of this road in order to prevent its completing tracks paralleling a competing line from Owensboro on the Ohio River to Nashville. This result was effected by purchase of the majority of the stock of the Nashville, Chattanooga & St. Louis Railway Co., and that road is now operated in harmony with your system.

Do you recall that report, or have you seen the report in your files?

Mr. **Smith**. No, sir; I have not.

Mr. **Folk**. I will ask you, without taking the time to read this in full——

Mr. **Stone** (interposing). What is the date of that, Governor?

Mr. **Folk**. It is dated June 30, 1880, an exhibit to your testimony.

Mr. **Jouett**. Can't you put that in by someone else? He doesn't know a thing about it.

Mr. **Folk**. It is from his files. I will ask him if he does know.

Mr. **Jouett**. Very well.

Mr. **Smith**. I was not connected with the management of the Louisville & Nashville Railroad Co. when that report was made, if the date here is given correctly, for the year ended June 30, 1880.

Mr. **Folk**. Is there any objection to that being an exhibit to this testimony?

Mr. **Jouett**. I would rather not. I don't know anything about it, Governor. You can put it in by anybody else. This witness doesn't know anything about it, and was not even connected with the company at that time.

Mr. **Folk**. Can you identify that as a copy?

Mr. **Smith**. Of course not. I was not connected with the company and have never seen the report. If it is a correct extract from the report of the Louisville & Nashville Railroad Co., of course it is accessible.

Mr. **Folk**. You were president of the Louisville & Nashville Railroad Co. and have been, for many years, a director in the Nashville, Chattanooga & St. Louis Railway Co., and yet have never seen the original report under which the Nashville, Chattanooga & St. Louis Railway Co. was acquired?

Mr. **Smith**. The conditions that then existed, which apparently this refers to, if I read it correctly, were perhaps peculiar but not unusual. There was intense rivalry between the then president of the Nashville, Chattanooga & St. Louis Railway Co. and the president of the Louisville & Nashville Railroad Co., as I have been generally advised. I know there was prior to 1878. The president of the Louisville & Nashville Railroad Co., in a way, made himself very offensive to the president of the Nashville, Chattanooga & St. Louis Railway Co. There was a struggle between them, and there were efforts on the part of the president of the Nashville, Chattanooga & St. Louis Railway Co. to prevent the lease of the Nashville & Decatur Railway to the Louisville & Nashville Railroad Co. in 1871—as far back as that.

Mr. **Folk**. The policy, then, of the Louisville & Nashville Railroad Co.——

Mr. **Jouett** (interposing). Let him finish his answer, Governor.

Mr. **Folk**. I thought he had finished.

Mr. **Smith**. The policy, to which they refer there, of the management of the Nashville, Chattanooga & St. Louis Railway Co. was the discrimination which was claimed by the management of the Louisville & Nashville Railroad Co. against that company having an interchange of traffic at Nashville. The Louisville & Nashville Railroad was the largest connection; that is, interchanged much the largest amount of traffic with the Nashville, Chattanooga & St. Louis Railway of any connection that road had; but the Nashville, Chattanooga & St. Louis Railway Co. having a line to Hickman connecting with the Mobile & Ohio Railroad at Union City, Tenn., naturally wanting its long haul, refused to interchange traffic with the Louisville & Nashville Railroad at Nashville upon the same terms, and by "the same terms" I mean the same proportion of rates on through traffic at Nashville that it gave to the line from Hickman. That was the grievance that the Louisville & Nashville Railroad Co. had against the Nashville, Chattanooga & St. Louis Railway Co.

At least since 1882 the proportional rates over the Nashville, Chattanooga & St. Louis Railroad south of Nashville have been the same for the Louisville & Nashville as on traffic reaching it over what is known as the northwestern division, and, per contra, the proportional rates of the Louisville & Nashville from Nashville south have been the same on traffic interchanged with the Nashville, Chattanooga & St. Louis Railway as they were on traffic over its own line, either from St. Louis or from Louisville. The settlement of these contentions and the adjustment of them was greatly facilitated by the fact that the Louisville & Nashville Railroad Co. acquired an interest in the stock of the Nashville, Chattanooga & St. Louis Railway Co.. There were a great many such questions as that, to which Mr. Newcomb may have referred, although Mr. Newcomb himself knew very little about such matters. He was only president for a year or two—less than two years, I think. It is not likely that he wrote the report, but it seems to be a copy of a report of the president of the Louisville & Nashville Railroad Co.

Mr. **Folk**. It has been the policy of the Louisville & Nashville Railroad Co., Mr. Smith, hasn't it, to protect the interest of the Nashville, Chattonooga & St. Louis Railway Co., even at a heavy loss to itself?

Mr. Smith. That is what I have stated. I testified to that effect. I will not say that is the policy, but that has been the result of its policy. I would not like to say that we adhered to a policy that resulted in a heavy loss to the Louisville & Nashville Railroad Co. unless the benefits to the Nashville, Chattanooga & St. Louis Railway Co. were really apparent.

Mr. Folk. The Louisville & Nashville Railroad Co. may be said to exercise a policy of benevolent assimilation with respect to the Nashville, Chattanooga & St. Louis Railway; is that correct?

Mr. Smith. I think that is a little deep for me.

Mr. Folk. "Benevolent assimilation?"

Mr. Smith. Yes.

Mr. Folk. The Nashville, Chattanooga & St. Louis Railway Co. is controlled in the interest of the Louisville & Nashville Railroad Co., is it not?

Mr. Smith. Of the Nashville, Chattanooga & St. Louis Railway Co.'s stockholders.

Mr. Folk. And the Louisville & Nashville Railroad Co. is the principal stockholder?

Mr. Smith. If the result is beneficial to the Nashville, Chattanooga & St. Louis Railway Co.'s stockholders it probably is to the Louisville & Nashville Railroad Co.'s stockholders.

Mr. Folk. Just answer that question, Mr. Smith, and then we will be through.

Mr. Smith. Especially so long as they receive a 7 per cent dividend.

Mr. Folk. The Nashville, Chattanooga & St. Louis Railway Co. is controlled in the interest of the stockholders of the Nashville, Chattanooga & St. Louis Railway Co., and the Louisville & Nashville Railroad Co. is the principal stockholder of the Nashville, Chattanooga & St. Louis Railway Co.?

Mr. Smith. Yes, sir.

Mr. Folk. I will not ask anything further at this time, your honor. I will state that we will take up in court this question of Mr. Smith answering these questions which he has refused to answer, and as soon as the court rules the chairman will announce, I suppose, the date of the continuation of the examination of Mr. Smith. It will suit you and Mr. Jouett, Col. Stone, to be here to take up this matter in Washington on Thursday or Friday of this coming week?

Mr. Stone. No. You want to take it up in Washington, do you?

Mr. Folk. Yes; as to Mr. Smith.

Chairman **Meyer.** That matter may be arranged off the record. This closes the session for to-day.

(Whereupon, at 3.40 o'clock p. m., on the 6th day of May, 1916, the present hearing was adjourned, the date for further hearing to be fixed later.)

3

Office Supreme Court, U. S.
FILED
MAR 6 1917
JAMES D. MAHER
CLERK

No. [redacted] 337

COMPULSORY TESTIMONY CASE.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

MILTON H. SMITH, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

JOHN W. DAVIS,
Solicitor General of the United States,
JOSEPH W. FOLK,
Chief Counsel, Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

MILTON H. SMITH, APPELLANT, *v.* INTERSTATE COMMERCE COMMISSION, appellee.	No. 807.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Come now the Solicitor General of the United States and the Interstate Commerce Commission, by its counsel, and, in accordance with the provisions of section 2 of the act of June 16, 1910, 36 Stat. 542, and of the urgent deficiency act of October 22, 1913, 38 Stat. 208, 220, move the court to advance the above-entitled cause for hearing on a day convenient to the court during the present term.

Pursuant to a resolution of the United States Senate, and to a complaint filed with the Interstate Commerce Commissior, under section 13 of the act to regulate commerce, by Luke Lea, against the Louisville & Nashville Railroad Company et al., calling for an investigation into certain expenditures made by the railroad company from its revenues, which expenditures it was alleged had been improperly charged on the books of the railroad company to "operating expenses," an investigation was instituted and a hearing held by the Commission. At the hearing, appellant, who was president and chief executive officer of the railroad company, was summoned to appear before the Commission as a witness. It appeared that the purposes of the expenditures involved were not disclosed by the books of the railroad company, but that the vouchers therefor showed that they had been made upon the order of the president of the company, and certain questions were accordingly propounded to him by the Commission calling for his knowledge as to the expenditures and the purposes for which the payments had been made. Appellant refused to answer those questions, although the Commission required him to do so, and, being persistent in his refusal to make answer thereto, the Commission filed in the Supreme Court of the District of Columbia a petition praying for an order of that court directed to appellant commanding him to answer the questions propounded, which petition was allowed and a decree entered by said court in accordance with the prayer thereof; whereupon the present appeal to this court was prosecuted.

The questions involved are *inter alia:*

1. Whether the Interstate Commerce Commission, in an investigation of this character, has power to require an officer of a railroad carrier subject to the

act to regulate commerce to divulge the purposes of certain expenditures made at such officer's direction, when such purposes are shown neither by the books of the railroad carrier nor by the vouchers covering the payments.

2. Whether, in such an investigation, the Commission has authority to inquire into the object of such expenditures for the purpose (*a*) of reporting the same to Congress in response to a resolution by the Senate calling therefor, and (*b*) of determining whether or not such expenditures are properly chargeable to "operating expenses."

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.
JOSEPH W. FOLK,
Chief Counsel, Interstate Commerce Commission.

○

Office Supreme Court, U. S.
FILED
SEP 22 1917
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 337.

MILTON H. SMITH, APPELLANT,

versus

INTERSTATE COMMERCE COMMISSION, APPELLEE.

BRIEF FOR APPELLANT.

EDWARD S. JOUETT,
HELM BRUCE,
Counsel for Appellant.

HENRY L. STONE,
Of Counsel.

September 10, 1917.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

INDEX.

PAGE

Statement 1

Order of Interstate Commerce Commission of November 10, 1913 3

Synopsis of plaintiff's petition 8

Answer of respondent 10

Decree 15

Assignment of errors 17

Argument 18

A witness summoned by the Commission and called upon to answer a question may refuse to do so if (1) the question does not "relate to the matter under investigation" or (2) such matter is not "one which the Commission is legally entitled to investigate" 18

Interstate Commerce Commission v. Brimson, 154 U. S. 447 18

The matters under investigation concerning which the appellant was interrogated were simply (1) alleged *political activities* of certain railroad companies and (2) alleged efforts of the same companies to *suppress competition* 19

Quotation of twelfth paragraph of Commission's order under which the questions in issue were asked 22

PAGE

The matters under investigation were not such as "the Commission is legally entitled to investigate" 29

a. Political activities 29

b. Keeping out competition 34

Under the amendment of June 18, 1910, to the Commerce Act, the Commission's powers of investigation are still confined to matters regulated by the Act to Regulate Commerce; and the principles settled by the Brimson case referred to above are unaffected by this Amendment 37

It can not be held that Congress intended to vest the Commission with the autocratic power to compel witnesses to answer any question which may occur to the Commission, whether upon subjects regulated by the Commerce Act or not, unless such power has been given by "explicit and unmistakable words" 40

Harriman v. Interstate Commerce Commission, 211 U. S. 407, 421 40

Principles under discussion applied to the questions which the Decree directs the witness to answer 44

Appendix—Order of Interstate Commerce Commission of November 10, 1913, set forth in full 47

LIST OF AUTHORITIES.

PAGES

Act to Regulate Commerce, as amended June 18, 1910, Section 13 37

Ellis v. Interstate Commerce Commission, 237 U. S. 434 1

Haines v. Chicago, Rock Island R. Co., 13 I. C. C. 214 32

Harriman v. Interstate Commerce Commission, 211 U. S. 407 .... 1, 40

Interstate Commerce Commission v. Brimson, 154 U. S. 447 18

New York Produce Exchange v. Baltimore & Ohio R. Co., 7 I. C. C. 612 31

Reports of Interstate Commerce Commission:
  Second Annual Report (year 1888) 30
  Thirteenth Annual Report (year 1899) 30
  Fourteenth Annual Report (year 1900) 30

Spring v. Baltimore & Ohio R. Co., 8 I. C. C. 443 .... 32, 34

Texas & Pacific R'y v. Interstate Commerce Commission, 162 U. S. 197 32

Traders & Travellers Union v. Philadelphia R., etc., Co., 1 I. C. C. 371 31

United States v. Joint Traffic Assn., 171 U. S. 505, 35

United States v. Louisville & Nashville R. Co., 236 U. S. 318 .... 3, 21

CASES CITED.

PAGES

Ellis v. Interstate Commerce Commission, 237 U. S. 434 1

Harriman v. Interstate Commerce Commission, 211 U. S. 407, 421 1-40

Interstate Commerce Commission v. Brimson, 154 U. S. 447 18-43

United States v. Louis. & Nash. R. R. Co., 236 U. S. 318 3-5-21

Cases showing the Commission's powers are strictly limited by the Federal Act and its Amendments, 31-35

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 337.

MILTON H. SMITH, - - - - - - - - *Appellant,*

versus

INTERSTATE COMMERCE COMMISSION, - *Appellee.*

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Supreme Court of the District of Columbia in a suit instituted by the Interstate Commerce Commission against Milton H. Smith, in which the Commission sought to compel Mr. Smith to answer certain questions which had been propounded to him and which he, on advice of counsel, had refused to answer. The decree ordered him to answer certain specific questions, which are set forth in the decree, and he has appealed to this court. The procedure was modeled after that adopted in *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, and *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434.

The main question involved is as to whether or not the Interstate Commerce Commission has the authority to examine into suggested *political activities* of a railroad company, such as making contributions to political campaigns, and attempting to influence public opinion, etc. It was on account of the belief of counsel that the Commission has no such authority that advice was given Mr. Smith as a witness not to answer questions on this subject.

A brief chronological statement of the matter, as shown by the record, is as follows:

Mr. Luke Lea is a citizen of the State of Tennessee, residing just outside of the city of Nashville. In the summer of 1913 he was the owner and publisher of a newspaper in that city. He had asked the Louisville & Nashville Railroad Company to do certain things for him, which it had declined to do. He became very hostile on this account and began to bitterly attack that company through the columns of his Nashville paper. At that time he was a member of the Senate of the United States, representing the State of Tennessee; and in August of that summer, when he was in the midst of his attack upon the Louisville & Nashville Railroad Company, he introduced a resolution in the Senate, which "directed" the Interstate Commerce Commission to investigate certain questions relating mainly to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, in which latter company the Louisville & Nashville Railroad Company owns the majority of the capital stock. This resolution was finally brought to a vote in November, 1913, and was passed (at a time when there were only fourteen members of the Senate in the chamber).

Of course, this resolution, simply passed by the Senate, constituting but one House of Congress, had no legal effect, as this court said in *United States* v. *Louisville & Nashville Railroad Co.*, 236 U. S. 318, known briefly as the "Louisville & Nashville Correspondence Case," in which this same resolution was under consideration. Nevertheless, the Commission obeyed the direction contained in this resolution and entered the following order:

"No. 6319.

"*In re* financial relations, rates and practices of the Louisville & Nashville Railroad Company; Nashville, Chattanooga & St. Louis Railway; and other carriers.

"The United States Senate having, by Resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable—

"First, etc. (here follow thirteen numbered paragraphs which are an exact quotation of the Senate resolution defining the subjects of inquiry, all of which is given in an appendix to this brief, after which the order proceeds:)

"It is ordered, that a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

"It is further ordered, that this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents, and papers as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

"And it is further ordered, that a copy of this order be served upon each of the following-named railroad companies and upon any other companies which may hereafter be designated by the Commission:

> Nashville, Chattanooga & St. Louis Railway;
> Louisville & Nashville Railroad Company;
> Nashville & Decatur Railroad Company;
> Lewisburg & Northern Railroad;
> Tennessee Midland Railroad Company;
> Tennessee, Paducah & Alabama Railroad;
> Western & Atlantic Railroad; and
> Atlantic Line Railroad Company.

"By the Commission:
"(Signed) George B. McGinty,
"Secretary."

It will be observed from the language of this order that it first recites the adoption of the foregoing resolution of the Senate, consisting of thirteen paragraphs, which the order quotes in full, and after this quotation the order proceeds as follows:

> "It is ordered that a proceeding of inquiry and investigation be, and the same is hereby instituted *into and concerning the several matters and things set forth and referred to in the said resolution.*"

From this it is seen that the inquiry which the Commission ordered, and which the railroad companies were summoned to meet, is an inquiry which is limited to "the several matters and things set forth and referred to *in the said resolution,*" and is not an unlimited general order of investigation into the affairs of the railroad companies involved. This is important, and will be referred to again.

Although the order of the Commission instituting this inquiry was entered on November 10, 1913, the Commission never called any *hearing* upon the subjects set forth in the order for about *two and a half years,* to-wit, not until April —, 1916. It did direct its examiners to make certain *examinations of the records* of the railroad companies, which they undertook in the early part of 1914, in the course of which they demanded access to all the correspondence of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway. This those railroad companies refused, believing that the statute did not authorize the Commission to make such demand, in which refusal the railroad companies were upheld by this court (United States v. Louisville & Nashville Railroad Company, 236 U. S. 318), which decision was handed down on *February 23, 1915.*

More than a year elapsed after this decision on the subject of the power of the examiners of the Commission, before any *hearing* was ever fixed under this Commission's order of inquiry, which order, as said before, had been made more than two years before, in November, 1913. In the meantime, during the year 1915, there was a hot political campaign in the State of Tennessee, in which Mr. Luke Lea was a candidate for the nomination for the United States Senate, and in which campaign he was unsuccessful.

In the last month of that year, December, 1915, after he had lost his political fight, he, in his individual name, filed a complaint before the Interstate Commerce Commission against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, setting forth as his sole ground of complaint the alleged improper issue and distribution of free passes by the two railroad companies named. And in the following March, 1916, an order was made by the Commission consolidating the proceeding heretofore mentioned (No. 6319) with this proceeding, in which Luke Lea was the complainant (No. 8488), and directing that they proceed thereafter upon one record. Subsequent to this order of consolidation a hearing was had at Nashville, beginning on April 27, 1916, which was later adjourned to the city of Washington, where it proceeded on May 4, 1916. At this latter hearing Milton H. Smith was called as a witness by the counsel for the Commission, and in the course of the examination he was asked the questions heretofore referred to, which he declined to answer.

Mr. Smith's only refusal to answer was as to questions upon the subject-matter embraced in the *twelfth paragraph* of the Senate Resolution and the Commission's order, which paragraph is as follows:

> "Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & Saint Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & North-

> ern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

All questions propounded to him arising under other paragraphs of the order the witness freely answered. And the reason he refused to answer the questions arising under the twelfth paragraph is because he believed, as we assert, that the subject sought to be inquired into in that paragraph is *not within the jurisdiction of the Commission.* The inquiry was confined exclusively to supposed *political activities* and efforts to *suppress competition.*

Nearly all of the questions which the witness refused to answer related to *political activities*, though a few questions were asked relating to an alleged effort to prevent the Tennessee Central Railroad from entering Nashville as a competitor of the Louisville & Nashville Railroad Company.

PLAINTIFF'S PETITION.

When Mr. Smith refused, on advice of counsel, to answer the various questions referred to, the Commission filed in the Supreme Court of the District of Columbia a petition in equity against Milton H. Smith, seeking a decree directing him to answer the questions mentioned. This petition (Rec., 1) begins with the statement that the Commission "is an administrative tribunal," created under the Act to Regulate Commerce. It then refers to various sections of that act, to-wit, Section 1, providing that all charges shall be just and reasonable; Section 15, authorizing the Commission to fix rates; Section 12, authorizing the Commission to inquire into the management of the business of common carriers and to keep itself informed as to the manner of conducting the same; Section 13, authorizing the Commission to inquire as to any matter concerning which a complaint is authorized to be made or concerning which any question may arise under the provisions of the act, or relating to the enforcement of those provisions; Section 20, authorizing the Commission to prescribe forms for accounts, records and memoranda to be kept by the carrier and to require detailed accounts of expenditures; and Section 21, requiring the Commission to make annual reports to Congress.

Then having set forth this brief analysis of the Act to Regulate Commerce, the petition quotes in full the order of the Commission of November 10, 1913, heretofore referred to, and which is quoted in full in the appendix.

It then alleges that Mr. Smith was called as a witness and refused to answer certain questions; and thereupon the Commission quotes from the Transcript of Evidence, showing the questions of counsel and the responses of the witness.

After having set forth this examination, the petition then closes with this brief general statement:

> "That in pursuance of its duty under the law, it was incumbent upon your petitioner to enable it to perform the functions for which it was created to procure the information sought by the questions put to the said witness, Milton H. Smith, and which he refused to answer.
>
> "That your petitioner is of the opinion that the said questions, and each of them, are relevant and material to the matter under investigation, and that an answer to each of said questions is necessary in order to enable your petitioner to discharge its duties and execute and enforce the provisions of said Act to Regulate Commerce and to inform your petitioner as to the manner and method in which the business of the said common carrier is conducted and to enable your petitioner to obtain full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created."

Then comes the prayer that the witness be compelled to answer the questions.

To this petition the respondent answered, and as this answer is not very long and briefly presents the situation as we see it, we quote the same in full as follows:

ANSWER OF RESPONDENT.

"Respondent, Milton H. Smith, for answer to the petition herein, says:

"He admits that the petitioner is an administrative tribunal, and says that it has no jurisdiction, rights, duties, or powers, except such as are given it by an Act of Congress, entitled 'An Act to Regulate Commerce,' approved February 4, 1887, and amendments thereto, and a few other special powers given it by special acts of Congress, which, however, do not pertain to anything involved in the present controversy. And respondent says that the power to investigate political questions, or questions as to whether or not common carriers have engaged in political activities, or in attempts to create sentiment in favor of their plans are not among the powers given to the Interstate Commerce Commission. And neither is the power to investigate the question as to whether or not a particular common carrier has attempted to prevent another common carrier from entering the territory in which the first carrier operates, among the powers conferred upon the Interstate Commerce Commission. The powers of that Commission, which is a purely ministerial tribunal, having only the powers given it by Act of Congress, are, with the few exceptions above stated, confined to the enforcement of the Act to Regulate Commerce, and the amendments thereto; and *that act, as amended, does not attempt to regulate the politics or political activities of common carriers,* nor the subject of their endeavoring to exclude competitors from their territories.

"But respondent says that the sole object of the major part of the questions propounded to him by the counsel for the Interstate Commerce Commission, and which he declined to answer, was to delve into questions purely political, and to ascertain whether or not respondent personally, and as the President of the Louisville & Nashville Railroad Company, believed that a railroad company had the right to engage in political campaigns and to make political contributions; and as to whether or not it had been the policy of the Louisville & Nashville Railroad Company to engage in political campaigns and to make contributions of funds to such campaigns; and as to whether or not said Louisville & Nashville Railroad Company had in the past in fact engaged in such political campaigns, or made contributions of funds to the same, and if so, to what extent, and when and where; all of which matters, as respondent is advised, are matters entirely outside the jurisdiction of the Interstate Commerce Commission, and concerning which it had no right to demand that this respondent should answer.

"And respondent says that the proceeding before the Interstate Commerce Commission, in which he was interrogated and out of which the present controversy arises, is a consolidation of two proceedings, principally against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, before the Interstate Commerce Commission, to-wit, Nos. 6319 and 8488 on the docket of that Commission; that Luke Lea is the open and sole complainant in the latter, and is the instigator and real complainant in the former, of said two proceedings; that said former proceeding, to-wit, No. 6319, was instituted by the Interstate Commerce Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by said Luke Lea, who then was, and now is, a member of said Senate, and who is the open complainant in the other of said two proceedings, to-wit, No. 8488, the complaint in which is confined solely to the alleged improper issue of free passes by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

"Respondent says that at the time said resolution was introduced into the Senate, as aforesaid, which was in August, 1913, the said Luke Lea, who then was, and now is, the owner and operator of a newspaper in the city of Nashville, Tenn., was engaged in a bitter attack upon the Louisville & Nashville Railroad Company through the columns of his said newspaper, due to the fact that the said Louisville & Nashville Railroad Company, or certain of its officials, had declined to do for him what he had requested, the result of which was that he began and continued attacking the Louisville & Nashville Railroad Company through the editorial columns of his said newspaper, and in the midst of said attack introduced into the Senate of the United States the resolution aforesaid, in August, 1913, which he did not bring to a vote until in November, 1913, at a time when, as respondent is advised, only fourteen members of the Senate were present. Following the entry of the order of the Interstate Commerce Commission, pursuant to said Lea resolution, an extensive examination of the accounts, records and memoranda of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway was made by examiners of the Interstate Commerce Commission, during the course of which they attempted to examine the correspondence of said companies, which, however, the Supreme Court of the United States held they were not entitled to do (United States v. Louisville & Nashville Railroad Company, 236 U. S. 318). Pursuant to said resolution the Commission made two elaborate reports to the Senate, viz., on July 7, 1914, and February 16, 1915, covering the matters embraced in said resolution; but no attempt was ever made by the said Commission to have any hearing, or to examine any witnesses, pursuant to its order under the Lea resolution aforesaid, which order was made on November 10, 1913, until more than two years and four months thereafter, and not until after said Luke Lea had made a political race for re-election to the United States Senate for Tennessee in the year 1915, and had been defeated, after which, manifestly through his insistence, and presumably without any knowledge upon the part of the Interstate Commerce Commission of his ulterior motives, the said order of investigation, which had lain dormant for so long a period, was revived, and an attempt was made by means of the questions which respondent declined to answer, to inquire into the question of whether or not the Louisville & Nashville Railroad Company had been taking a part in politics, and especially in the State of Tennessee; the first question, specific as to time and place, asked of respondent on this subject of political contributions being as to whether or not respondent knew of any funds of the Louisville & Nashville Railroad Company '*expended in the State of Tennessee for political campaign purposes during the year 1915'; Tennessee being the State and 1915 the year in which said Luke Lea made his unsuccessful political campaign for his party's nomination as a candidate for the United States Senate.*

"And respondent submits that the Interstate Commerce Commission has no lawful right, and no power, to command him to answer questions on the subject of political contributions, or other political activities; and to do so is a perversion of the purposes for which the Interstate Commerce Commission was created.

"And so as to questions asked of respondent, and which he declined to answer, as to whether or not the Louisville & Nashville Railroad Company attempted to create sentiment in favor of its plans or took any part in a suit instituted in the city of Nashville, Tenn., by one McClanahan against the city of Nashville to enjoin an issue of bonds by that city in favor of the Tennessee Central Railroad, and as to whether or not he, the respondent, desired to prevent the building of that railroad, or other railroads, into territory served by the Louisville & Nashville Railroad Company. This is a matter wholly outside of the jurisdiction of the Interstate Commerce Commission, and over which it is given no power of investigation or regulation.

"Respondent avers and submits that he was, and is, justified in refusing to answer the questions, and each of them, set forth in the petition, which he did refuse to answer; and that the petitioner, the Interstate Commerce Commission was and is, without lawful power or jurisdiction to investigate or regulate the subjects concerning which said questions were asked, and was, and is, without lawful power or jurisdiction to call upon or require him to answer said questions, or any of them.

"As to the allegations of the petition concerning the meaning and effect and requirements of the Act to Regulate Commerce as amended, respondent refers to said Act and its amendments to speak for themselves, but denies the legal effect attributed thereto by the petitioner, as well as other legal conclusions stated in the petition. And respondent denies that, pursuant to its duty under the law, it was encumbent upon petitioner, to enable it to perform the functions for which it was created, to procure the information sought by the questions put to respondent, and which he refused to answer.

"Wherefore, having fully answered, respondent prays to be hence dismissed with his costs."

THE DECREE.

The case, having been submitted to the court on the petition and answer, it entered a decree directing the respondent to answer the following questions:

> "Mr. Folk: I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the State of Tennessee for political campaign purposes during the year 1915 and charged on the books of that carrier to operating expenses?
>
> Mr. Folk: Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?
>
> Mr. Folk: Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

Mr. Folk: Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

Mr. Folk: Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

Mr. Folk: Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

Mr. Folk: Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000 issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

Mr. Folk: Mr. Smith, did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that State?

Mr. Folk: Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?

Mr. Folk: Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?" (Rec., 38.)

ASSIGNMENT OF ERRORS.

The formal assignment of errors will be found in the record beginning at page 45; but the errors assigned may be briefly summarized as follows:

The court erred in requiring the witness to answer the questions set forth in the decree, because the matters under investigation by the Interstate Commerce Commission, in course of which said questions were propounded to the witness, were those covered and defined by paragraph 12 of the order of the Commission instituting said investigation, and those matters were the suggested *political activities* of certain railroad companies and suggested efforts by them to *suppress competition*, which are not matters which the Commission is "legally entitled to investigate"; and therefore the witness was justified in refusing to answer the questions.

ARGUMENT.

The first case which ever came before this court involving the power of the Commission to compel a witness to answer questions was *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, in which, in speaking of the duty of the citizen to obey the law and to appear and testify and produce books and papers, when called upon by the Commission, the court said:

> "This power conferred upon the Commission imposes upon any one, summoned by that body to appear and testify, the duty of appearing and testifying, and upon any one required to produce such books, papers, tariffs, contracts, agreements and documents, the duty of producing them, *if* the testimony sought, and the books, papers, etc., called for, *relate to the matter under investigation,* if such matter is *one which the Commission is legally entitled to investigate,* and if the witness is not excused on some personal ground from doing what the Commission requires at his hand" (page 476).

It will thus be observed that the court here distinctly asserts three conditions under which a witness may *lawfully refuse to answer* a specific question, to-wit, (1) *if the testimony called for does not relate to the matter under investigation;* (2) if the matter which the Commission is seeking to investigate is *one which it is not legally entitled to investigate;* and (3) if the witness has some personal ground of exemption.

These principles make it all important in every case of attempting to compel a witness to answer questions propounded by the Commission, to inquire (1) what is the matter under investigation? and (2) is the matter under investigation "one which the Commission is legally entitled to investigate"?

It is very important to answer correctly these questions in the case at bar, because in this, as in every other such case, they are fundamental.

WHAT IS THE MATTER UNDER INVESTIGATION?

A proper answer to this question is of the highest importance, because all else depends upon it. We can not tell whether or not, in the language of the Brimson case, the subject is "one which the Commission is legally entitled to investigate," or whether or not, in the language of the same case, the questions asked "relate to the matter under investigation," until we have a clear understanding as to what the matter is which is under investigation.

The subject of an investigation by the Commission is, of course, defined by the order of the Commission instituting the investigation. Every investigation which the Commission makes is not as broad as the Commission's power to investigate. If it orders an investigation of the Louisville & Nashville Railroad Company, its examiners and counsel can not, under that order, investigate the Pennsylvania Railroad Company. Likewise, if it orders an investigation of one particular subject-matter relating to the Louisville & Nashville Railroad Company, its examiners and counsel can not, under that order, investigate an entirely different subject-matter. And this is what is meant by this court in the Brimson case when it says that a witness may refuse to answer a question if it does not "relate to the matter under investigation," even though it may relate to some other matter which possibly the Commission has the power to investigate. But the question as to whether or not the inquiry would be competent in the course of some other investigation than the one which the Commission has ordered, or the question as to whether or not this other suggested matter is one which the Commission would have the power to investigate, can not arise, because the examination of the witness must be confined to the "matter under investigation," and that matter must be one which the Commission is "legally entitled to investigate." We then come back to the question: What is the matter under investigation, according to the Commission's order in the case we are now considering?

We see from the Commission's order itself that it was an investigation "directed" by the Senate along lines specifically defined by the Senate, and that the Commission, in making the order, after first referring to the Senate's direction and quoting the Senate's language in the resolution defining what the Senate desired investigated, then says:

> "It is ordered that a proceeding of inquiry and investigation be, and the same is hereby, instituted into and *concerning the several matters and things set forth and referred to in the said resolution.*"

This language is too plain to admit of doubt. Nothing outside of the "several matters and things set forth and referred to in the said resolution" is ordered to be investigated. We can hardly conceive of this proposition being disputed, and it was expressly conceded by the Solicitor General of the United States in his brief in the case of *United States v. Louisville & Nashville Railroad Co.*, 236 U. S. 318, which involved the right of the Interstate Commerce Commission to examine the correspondence of the Railroad Company in proceedings had under the order of the Commission which we are now considering. In his printed brief filed in this court in that case, in speaking of the Senate resolution and the action taken by the Commission under it, the Solicitor General said:

> "It had a clear right to give heed to the resolution of the Senate and to comply with it so far as its powers permitted. Having been stirred to action, it was not even bound to restrict its inquiry to the limits fixed by the resolution, *although it appears that it elected to do so.*" (Brief of Solicitor General, page 12, in case of United States v. Louisville & Nashville Railroad Co., 236 U. S. 318.)

As suggested before, the matter does not seem to be debatable. The subject of investigation is undoubtedly that which was limited and defined by the resolution of the United States Senate, and was directed by that body to be investigated. And as it is not claimed that the witness refused to answer any question concerning subjects of investigation defined by any of the paragraphs of that resolution, except the *twelfth*, this, therefore, is the only important paragraph to consider—in other words, the subject of investigation, so far as it is important to be considered in this case, is that set forth in the *twelfth paragraph* of the *Senate's resolution*. This was expressly conceded by counsel for the Commission in the court below and it was so held by the court itself. For convenience we here repeat that twelfth paragraph:

> "Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

This, and this only, so far as affects this litigation, is the "subject under consideration," and relates exclusively to expenditures for *political purposes* and for *suppressing competition.* In the course of the opinion of the court below, the court shows that the Commission did not contend that the expending of money for any of the purposes set forth in this twelfth paragraph (to-wit, for political purposes or for preventing competition) were contrary to the provisions of the Act to Regulate Commerce. Thus the court says:

> "It is not contended by the Commission that the subscribing or expending of money for any of the purposes mentioned in the paragraph in question *would constitute a violation of any provision of the Act*" (Record, bottom of page 35).

The court, however, says that the Commission has power (1) to *fix reasonable rates* and (2) to direct and supervise the maner of *keeping accounts* of expenditures. And then the court asks the following question which really shows the court's theory of the case:

> "*Supposing* the Commission to have before it the carrier's account of expenditures for operating expenses and to wish to know whether such expenditures were incurred for the actual operation of the road or for some different purpose, would not this be a proper question to be put to enable the court to enforce the Act, which not only requires *rates to be reasonable but requires the accounts to be kept in a proper form* and one to be approved by the Commission?" (Rec., 36).

The court then answers this question in the affirmative, and upon that it *bases its decree.* In other words, in order to grant the relief sought by the Commission and to compel the witness to answer the questions which he had refused to answer, the court *supposes* a condition to exist which, not only is not alleged either in the Commission's order for the examination or in its petition before the court, but the non-existence of which condition is, we think, clearly shown on the face of the Commission's order.

The court *supposes* that the Commission *might have been* considering a question of the reasonableness of the rates of the Louisville & Nashville Railroad Company, and *might have found* it necessary, in the course of such a consideration, to inquire into the expenditures of the road for the purpose of seeing what the road could afford to charge, or that the Commission *might have been considering* a question of whether or not the particular railroads involved had properly kept their accounts in accordance with the forms prescribed by the Commission. And it is on account of such suppositions that the court upholds the Commission's demand that the witness answer the questions mentioned.

Now, as just said, not only does the petition of the Commission before the court fail to allege the existence of any such conditions as the court here supposes, but on the contrary, we submit that the order of the Commission affirmatively shows that the questions were not asked in the course of any such investigations by the Commission.

The court itself in its opinion comments upon the fact that the petition does not in any manner disclose the use to be made of the information sought from the witness. The court says:

> "It is perhaps worthy of remark that the petition itself does not specify the use expected to be made of the information sought. *It does not attempt to state in terms any question which the Commission conceives to have arisen under any provision of the Act.* It does not state, for example, that the information is sought in connection with any inquiry as to rates, regulations or practices or that the inquiry is being conducted for the purpose of ascertaining whether the carrier's accounts are being kept in proper form. It does state that in the opinion of the Commission the information is necessary to enable it 'to perform the functions for which it was created,' and 'to enable the Commission to discharge its duties and to execute and enforce the provisions of said Act,' and 'to inform the Commission as to the manner and method in which the business of the carrier is conducted, and to enable the Commission to obtain full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created'; but *it does not point out what provision of the Act is to be executed* and enforced with the assistance of the information which is being sought. The petition proceeds upon the theory that under the Act as now amended the Commission has the right to institute an inquiry and summon witnesses concerning any matters relating to the manner in which the business is being conducted, even though the only use to be made thereof should be to enable the Commission to determine what recommendations it ought

> to make to Congress with a view to further legislation; and this theory is also advanced and elaborated in the argument." (Rec., 34.)

But while the petition is thus vague and indefinite, the order of the Commission, which is copied into the petition, shows exactly the conditions under which it was made. It was not made because the Commission, in the course of an investigation as to the rates charged by the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway, found it important to find out how much had been expended by either of those roads in politics or to keep out competition, nor was it made in the course of any inquiry into the maner of keeping accounts by either of those roads. The order itself shows on its face why it was made, viz., that it was made by the Commission *simply because the United States Senate "directed" it to be made.* The order begins as follows:

> "The United States Senate having, by Resolution No. 153 adopted November 6, 1913, *directed* the Interstate Commerce Commission to investigate, take proof and report to the Senate as soon as practicable—
>
> 1. What amount of stock, bonds," etc. (Here follow the thirteen paragraphs of the Senate resolution, including, of course, the twelfth paragraph now under consideration.)

Then, after quoting these paragraphs of the Senate resolution, the Commission's order is as follows:

> "It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things *set forth and referred to in the said resolution.*" (Rec., 3-5.)

Thus it is perfectly clear that the reason the Interstate Commerce Commission undertook to investigate the amounts expended by the Louisville & Nashville Railroad Company for political purposes or to keep out competition was, not that it was in the midst of investigations either of the rates or of the accounts of that company, as supposed or assumed by the court as the foundation of its decree, but simply because the United States Senate had "directed" it to do so; the genesis of that resolution being what we have heretofore explained.

The Commission has often taken occasion to say to the Railroad Companies that they should be open and frank with the Commission and state facts exactly as they are; and we very respectfully submit that the Railroad Companies have a right to ask the Commission to exhibit a like frankness in dealing with them. And if this be done in the case at bar, we do not see how it can be claimed, in the face of the language of this order, and its known history, that the investigation of expenditures for political purposes or for suppression of competition is simply a part of a general investigation by the Commission of expenditures or of the manner of keeping accounts; we do not see how it can be denied that the investigation is made, simply as the order shows it was made, to-wit, because asked for by the Senate. And it is unmistakably plain that what was intended to be investigated, and all that was intended to be investigated, under this twelfth paragraph, was the matter of political activities and suppression of competition; and the question as to the amounts expended on these things was simply asked as a *measure of the extent of the Railroad Company's activities along these lines.*

There is absolutely no pretense that any complaint had been made as to those rates, no pretense that as a matter of fact the Commission was investigating any such question. But suppose the Commission had been investigating the reasonableness of the rates of the Louisville & Nashville Railroad Company. No question of expenditures would have become material, unless the Railroad Company had claimed that its rates could not be lowered without making its receipts less than cost. And if that question had come up and that kind of a claim had been made, it would have been absolutely idle to investigate simply the question of expenditures *on political activities.* Even though they might have been large, they would be a mere drop in the bucket compared to the company's total expenditures. And yet no order was made for an examination into these general expenditures.

We repeat, therefore, that this order shows on its face that the subject under consideration, as defined by it under the direction of the Senate, was simply the efforts of the Railroad Companies in *political matters* and in attempts to *suppress competition.* And if we are correct in this, it becomes necessary to consider and determine whether or not these are matters covered by the Act to Regulate Commerce and which are within the jurisdiction of the Interstate Commerce Commission; because if not, then it can not be said that the matter under investigation was "one which the Commission is legally entitled to investigate," and the witness had a right to refuse to answer the questions.

IS THE MATTER UNDER CONSIDERATION ONE WHICH THE COMMISSION IS LEGALLY ENTITLED TO INVESTIGATE?

(a) Political Activities.

To say that the Commission is not "legally entitled to investigate" the political activities of railroads, or what they may do to mould public opinion, is to assert a proposition which we do not believe will be denied. The Commission has itself used language as strong as we can use, indicating that its powers are confined to administering the Act to Regulate Commerce, and there is certainly nothing in that Act which authorizes the Commission to investigate the politics of a carrier. If it be suggested that this may be an unauthorized use of corporate funds, and therefore a misappropriation of the stockholders' money, the Commission has expressly said that it has nothing to do with this. It may not be out of place to quote to the court some of the language of the Commission in various reports and decisions, showing what it has itself said again and again are the limitations of its power.

In the Commission's Second Annual Report (for the year 1888), at page 21, the Commission said:

> "But in existing legislation we find nothing which seems to contemplate that special investigation will be entered upon with no other purpose than to prevent wrongs *to the corporation itself or its stockholders.*" (Second Annual Report, page 21.)

In the Thirteenth Annual Report to Congress (1899) the Commission, after asserting certain propositions, said:

> "This is only another way of saying that the duties of the Commission *are confined to enforcing the Act*, and the Commission has been particularly cautious not to do anything inconsistent with its official obligations in this regard." (Thirteenth Annual Report, page 11.)

Again in the Fourteenth Annual Report (1900) the Commission, in speaking upon the subject of railroad combinations and general financial operations, said:

> "The Commission is given authority 'to inquire into the management of the business of all common carriers subject to the provisions of this Act, and to keep itself informed as to the manner and method in which the same is conducted, *but*

> *this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic.*" (Fourteenth Annual Report, page 10.)

Again in one of the earliest cases decided by the Commission, to-wit. Traders & Travellers Union v. Philadelphia R., etc., Co., 1 I. C. C. 371, the Commission said:

> "Nor have we any general power or authority to manage the business of carriers, but only a *limited power*, expressly defined by the statute, *to interfere to prevent wrong and oppression in specified cases.* Every ground of our jurisdiction, as defined by the statute, relates directly or indirectly to the *transportation* of persons and freight by carriers *at fair and reasonable rates,* and absolute *impartiality as to facilities and accommodations.*" (Page 374.)

Again in New York Produce Exchange v. Baltimore & Ohio R. Co., 7 I. C. C. 612, the Commission used this clear and emphatic language:

> "*Our only jurisdiction is to inquire whether the Act to Regulate Commerce has been violated.* That law does not seek to interfere with the business operations of carriers subject to its provisions until *those operations contravene the provisions of the Act itself.* * * * Our only inquiry is, does the situation, which the carriers have created, *violate the Act to Regulate Commerce?* That this is the extent of our authority is now settled by the decisions of the United States Supreme Court." (Page 658.)

In Spring v. Baltimore & Ohio R. Co., 8 I. C. C. 443, the Commission said:

> "The real difficulty is that the Commission has *no authority to administer the anti-trust law,* or even to determine whether that law has been violated. A court of general jurisdiction could do so, but not an administrative body whose power is limited by the law which created it." (Page 456.)

Again in Haines v. Chicago, Rock Island R. Co., 13 I. C. C. 214, the Commission said:

> "The Interstate Commerce Commission is a creature of statute, and its authority is derived from the Act of Congress creating the Commission and the various amendments thereto. *Its function is to administer the Act to Regulate Commerce; not to enforce conditions found in Federal charters."* (Page 216.)

It will be hard to find more emphatic language than the preceding, which has come from the Commission itself, as to the limitation upon its own powers, and it asserts, to repeat some of the language quoted, that its "only inquiry is, does the situation, which the carriers have created, *violate the Act to Regulate Commerce?"*

And in one case in which the Commission showed a tendency to consider itself as an *aid or adjunct to other departments* and in the enforcement of other laws, this court held clearly that such was not the case. We refer to Texas & Pacific Railway v. Interstate Commerce Commission, 162 U. S. 197, in which the court said that the position taken by the Commission was that "it is the duty of the Commission to so construe the Act to Regulate Commerce as to make it practically *co-operate* with what it has assumed to be the *policy of the tariff laws.*" In denying the correctness of this position, the court said:

> "Our reading of the act does not disclose any purpose or intention, on the part of Congress, to thereby re-enforce the provisions of the tariff laws. These laws differ wholly in their objects from the law to regulate commerce." (Page 221.)

It would be a useless waste of time to take the various provisions of the long Act to Regulate Commerce, with its many sections, and show that none of them authorize or empower or make it the duty of the Interstate Commerce Commission to inquire into or investigate the political activities of a common carrier engaged in interstate commerce. We can only assert that there is nothing of the kind in the Act, and we have no fear that this statement will be contradicted. Persons may differ, and do differ, as to whether or not a railroad company, or any other public service corporation, or corporation of any kind, ought to take any part in politics, either in attempting to elect or defeat certain candidates to public office, or in attempting to influence legislation or to mould public opinion. But, however that may be —and, as just said, it is a matter about which persons differ—certain it is that there is nothing in the

Act to Regulate Commerce which forbids it, or gives to the Commission any power to investigate the subject.

(b) Keeping Out Competition.

There is absolutely nothing in the Interstate Commerce Act making it unlawful for a common carrier to attempt to prevent the entrance into its territory of another common carrier. Of course, this whole subject of restraint of trade and suppression of competition is entirely covered by what is familiarly known as the "Anti-Trust Act." But the subject is not covered by the Act to Regulate Commerce; and, as we have already shown, and as the Commission itself has expressly stated, it is not authorized to administer the Anti-Trust Act. We have already quoted the language of the Commission in Spring v. Baltimore & Ohio R. Co., 8 I. C. C. 443, in which the Commission said:

> "The real difficulty is that the Commission *has no authority to administer the anti-trust law*, or even to determine whether that law has been violated. A court of general jurisdiction could do so, but not an administrative body whose power is limited by the law which created it." (Page 456.)

The difference between the two acts, the Anti-Trust Act and the Act to Regulate Commerce, has been so often pointed out that it is useless to dwell upon it. A given state of facts can constitute a violation of the Anti-Trust Act without violating the

Interstate Commerce Act, and *vice versa.* For example, railroads might *by agreement* fix rates for interstate traffic and agree to abide by them for a given length of time. If rates so fixed were in and of themselves *fair and reasonable and non-discriminatory,* there would be no violation of the Interstate Commerce Act; but such action would clearly be a violation of the Anti-Trust Act (United States v. Joint Traffic Assn., 171 U. S. 505). In the case just cited certain rates had been *agreed upon,* which were "*admitted to be reasonable.*" (171 U. S. 565.) Yet the agreement was held to be a violation of the Anti-Trust law. That was a case where a law had been violated, and the offence was punishable and restrainable, but it was not a matter over which the Interstate Commerce Commission had any jurisdiction whatever. It was a matter to be handled, in the language of the Commission in the case already quoted, by "a court of general jurisdiction."

The only provision in the Act to Regulate Commerce, from beginning to end, that has any bearing on the subject of suppression of competition, is the fifth section of the Commerce Act, which forbids the *pooling and division of earnings* of different and competing railroads. But the twelfth paragraph of the Commission's order, which we are now considering, does not order any investigation of the subject of pooling earnings, but simply into the question of whether or not money has been contributed "for the purpose of *preventing other railroads from entering* any of the territory served by any of these railroads."

This question, however, of the power of the Commission to investigate efforts in the suppression of competition is really not material on this appeal, because of the fact that the court below, in its final decree, did not order the witness to answer any of the questions that were directed to that subject. The only possible relevancy of the consideration of that subject is in connection with two questions asked the witness, and which he refused to answer, concerning two vouchers, one for $20,715.06 and the other for $15,000.00. In declining to answer the questions as to those vouchers, counsel for the witness, and the witness himself, simply said that those vouchers were for expenditures covered by paragraph 12 of the order, without saying whether they referred to political activities or to matters affecting competition. (Rec., 15.) But if the Act to Regulate Commerce does not regulate *either* of those subjects, and the Commission, therefore, had no power to investigate either of them, then, of course, it had no right to compel the answers to those questions, no matter which of the two subjects the vouchers related to.

AMENDMENT OF JUNE 18, 1910.

The court in its opinion lays great stress on Section 13 of the Act to Regulate Commerce as amended June 18, 1910, and particularly upon the following language:

> "The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act."

But that language does not change the principles settled by the Brimson case. That language does not alter the propositions that in order to justify the propounding of a question to the witness by the Commission, it must appear (1) that the question relates to the subject-matter under consideration and (2) that this subject-matter is "one which the Commission is legally entitled to investigate." And whatever may be the Commission's *power* of investigation, yet if, in any particular investigation, it appears that the subject thereof has been *limited* by the Commission's order, and that this subject, thus defined and limited, is not "one which the Commission is legally entitled to investigate," then no question relating thereto can be properly asked. And, as said above, the language quoted from Section 13, as to the power of the Commission to investigate, does not affect any of the considerations, to which we have hereinbefore called the court's attention, applicable to the immediate case in hand.

Section 13, as amended, confines the Commission's power of investigation strictly to *matters covered by the provisions of the Act to Regulate Commerce.* The words, "provisions of this act," are found in each one of the three clauses of the language quoted defining the Commission's power of investigation. It has the power to inquire (1) "as to any matter or thing concerning which a complaint is authorized to be made to or before said Commission *by any provision of this act,* or (2) concerning which any question may arise *under any of the provisions of this act,* or (3) relating to the enforcement of any of the *provisions of this act.*" Thus the "provisions of this act," being the Act to Regulate Commerce, must be kept constantly in mind and the Commission can make no inquiry into any subject not covered by the "provisions of this act." It is worthy of comment that this does not give the Commission power to inquire into *anything pertaining to commerce.* There may be many things pertaining to commerce, such for example, as questions of monopoly and competition, which are not covered at all by the Act to Regulate Commerce, but which are covered solely by the Anti-Trust Act, or other particular acts. But the language of Section 13 of the

Act to Regulate Commerce does not give the Commission power to investigate questions of monopoly and competition which are covered by the Anti-Trust Act, or any question affecting the conduct of commerce, *unless the subject be within the provisions of the Act to Regulate Commerce*; and, as we have seen, those provisions do not cover either political activities of carriers or efforts to suppress competition.

Analyzing the particular language above quoted from the thirteenth section of the Act to Regulate Commerce, the court laid peculiar emphasis on the second clause of that language, in other words, upon that language of the section which says that the Commission shall have authority to inquire "as to any matter or thing * * * concerning which any question may arise under any of the provisions of this act." It was argued by counsel for the Commission that if there were any questions which one could conceive might possibly arise at any time under the provisions of the Act to Regulate Commerce, the Commission, under this language, could institute inquiry concerning same. As said above, this is not a relevant subject to consider in the case at bar, because we are not now considering the general *powers* of the Commission, but a particular investigation which the Commission *has chosen to limit and define by the language of its order*. But if it were relevant to consider the nature of the power given the Commission by the language just quoted, and which, as we say, was emphasized by the lower court, we would submit that it was never intended by that language to give the Commission the extraordinary power which its counsel claims under it. It must be remembered that in the case of *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, this court held that "the purposes of the act for which the Commission may exact evidence embrace only complaints for violation of the act, and investigations by the Commission upon matters that might have been made the object of complaint" (page 419). And in speaking of the Commission's claim that it was given power to summon witnesses "for the purpose of recommending legislation" or "that their testimony might furnish data considered by the Commission of value in the determination of questions connected with the regulation of commerce," the court said:

> "We could not believe on the strength of other than explicit and unmistakable words that such autocratic power was given for any less specific object of inquiry than a breach of existing law" (page 421).

And while this amendment of June 18, 1910, was passed, after the decision in the Harriman case, it is to be observed that Congress did not use "explicit and unmistakable words," giving the Commission power to "summon witnesses for the purpose of recommending legislation" or "that their testimony might furnish data considered by the Commission of value in the determination of questions connected with the regulation of commerce." It would have been easy to have used words to that effect if Congress had so desired. This court had pointed out, by the very language which we have just quoted, words which Congress might have used if it had desired to give the broad powers which the Commission desired.

The insistence in the Harriman case had been that the Commission had the power to require witnesses to answer any questions that might enable the Commission to recommend legislation, or that might furnish data considered by the Commission valuable in the determination of questions connected with the regulation of commerce, *whether they were covered by the Act to Regulate Commerce or not.* In other words, the argument of the Commission in the Harriman case was that, without regard to the provisions of the Act to Regulate Commerce, the Commission might desire to get information so as to recommend to Congress changes in that act; that the Commission might desire to secure information on some phase of commerce that was not then covered by the Act to Regulate Commerce; and the claim of the Commission was that it had the power to summon witnesses and make them answer questions upon any of these subjects. But this court said, no, that there is no such power given by this act, and that it could not believe "on the strength of other than explicit and unmistakable words that such autocratic power was given."

And surely no explicit and unmistakable words have been used in the amendment to show that it was the purpose of Congress to give the Commission power to *investigate any question pertaining to commerce or the regulation thereof.* On the contrary, the investigating powers of the Commission are still confined to questions arising "under the provisions of this act," meaning the Act to Regulate Commerce.

The lower court conceded that the claim of the Commission as to the meaning of this amendment was too broad, and the court expressly held, moreover, that the words of the amendment, "as to any matter or thing concerning which any question *may arise* under any of the provisions of this act," do not mean any question which *may possibly arise*, but any question which "has arisen." On that subject the court said:

> "It seems to this court that the words of the amendment must be held to give the Commission power to proceed by way of inquiry and examination of witnesses as to any matter or thing concerning which is a question *has arisen* under any of the provisions of the act or relating to the enforcement thereof; that the Commission is authorized thus to proceed touching any question which needs to be determined in order that the carrier may be required to comply with the provisions of the act relating to the conduct of interstate commerce" (Rec., page 35).

But the court made, what seems to us, the great mistake of holding, as we understand the opinion, that a question may be said to *have arisen* if it is asked by the counsel for the Commission *in the course of the examination of the witness;* whereas it is manifest, under the principles of the Brimson case, that the question asked must relate to the subject under investigation *as fixed by the order of the Commission instituting the investigation.* To say that the counsel for the Commission may raise a question by simply asking the question of the witness and that it must be then deemed that "a question has arisen" concerning which the Commission may inquire, is to do away absolutely with the principle settled by the Brimson case, to-wit, that the question propounded must relate to "the subject under investigation"; for the counsel could at any time ask any question that he might choose, and if that is what is meant by *raising a question,* the principle of the Brimson case is without meaning or value.

We repeat, therefore, that under the amendment of June, 1910, to Section 13 of the Act to Regulate Commerce, the inquiries by the Commission must still be confined, by the very language of the amendment, to questions arising under the provisions of the Act to Regulate Commerce; and it can not go outside of those provisions and inquire into any matter pertaining to commerce which it may choose to investigate. If Congress had intended or desired to give such broad power, it had the warning of this court before it that it must use "explicit and unmistakable words" to that effect. And the fact that it did not use any such words to grant any such power shows that it did not mean to grant it.

And we repeat, further, that a question can not be said to have arisen under the Act to Regulate Commerce simply when the counsel for the Commission has chosen to ask such a question of the witness. The question must have arisen when the Commission made its order for the examination, and the question must, of course, be one arising under the provisions of the Act to Regulate Commerce, otherwise the Commission has no jurisdiction over it, can not conduct an investigation into it, and can not compel the witness to answer a question concerning it.

QUESTIONS EMBRACED BY THE COURT'S DECREE.

Let us apply some of the principles we have been considering to the specific questions which the court's decree requires the witness to answer.

Recall, for example, the argument of counsel for the Commission and of the court below to the effect that the purpose of the examination was simply to find out *how much* the company had expended in politics or in keeping out competition. If that were the purpose of the Commission, then what was the possible relevancy of the very last question set forth in the decree and which the witness is required to answer, to-wit:

> "Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?" (Rec., 29).

The witness is required by the court to answer this question, yet manifestly it has no bearing on the question of the *amount of expenditures,* or upon the *manner of keeping accounts.* It is simply a question seeking to delve into the policy of the company in the matter of taking part in politics; and it shows what was in the mind of the counsel for the Commission.

Again, recall the emphasis which the court and counsel have laid upon the fact that this twelfth paragraph of the order simply asks "what amount, if any," the railroad companies have spent on political contributions or suppression of competition. The argument has been that the inquiry of this twelfth paragraph is not directed toward the details of political activities or suppression of competition, but simply toward the *amounts of expenditures.* That being true, then what is the relevancy of the questions asked Mr. Smith concerning the voucher for $20,715.06 and the other voucher for $15,000.00? The Commission knew the exact amounts to the cent of those expenditures, because the questions show this. If the Commission was also informed by the admission of counsel and by the statement of the witness that those amounts had been expended for subjects covered by this twelfth paragraph, then, if the Commission was only after a question of amounts of expenditures, why did not this satisfy the Commission? But it manifestly was after more than that; it did not simply want to go into a question of *how much* had been expended on the subjects covered by that twelfth paragraph, but it desired to go into the detail of those subjects and interrogate the witness upon them.

And as to the questions concerning how much had been expended in Tennessee in the political campaign of 1915, or in Alabama in the campaign of 1912 or 1913, or as to whether $34,500 had been expended in the Comer fight, these were manifestly mere inquiries into the extent of political activities of the railroad company in the States mentioned, and were clearly upon a subject which the Commission is not "legally entitled to investigate."

Before concluding this discussion we think it not amiss to call attention to the fact that, while the particular witness here involved is the president of the railroad company, yet if the Commission has the power to compel him to go into these political matters, it has the same power over any other witness, and we will have called before the Commission as witnesses such as survive of the Goebel campaign in Kentucky, the Luke Lea campaign in Tennessee, and the Comer campaign in Alabama. Surely the Interstate Commerce Commission was never intended for any such purpose.

For the foregoing reasons we ask that the judgment be reversed.

EDWARD S. JOUETT,
HELM BRUCE,
Counsel for Appellant.

HENRY L. STONE,
Of Counsel.

Sept. 10, 1917.

APPENDIX.

Order of Interstate Commerce Commission of November 10, 1913.

"No. 6319.

"*In re* financial relations, rates and practices of the Louisville & Nashville Railroad Company; Nashville, Chattanooga & St. Louis Railway; and other carriers.

"The United States Senate having, by Resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable—

"First. What amount of stock, bonds and other securities of the Nashville, Chattanooga & Saint Louis Railway is owned or controlled by the Louisville and Nashville Railroad;

"Second. What other railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & Saint Louis Railway have been purchased, leased, controlled, or arrangements entered into with for the purpose of controlling by either the Louisville & Nashville Railroad or the Nashville, Chattanooga & Saint Louis Railway;

"Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & Saint Louis Railway serve the same territory, in whole or in part, and whether, under separate ownership, they would be competitive to the various points in their territories;

"Fourth. Any other fact or facts showing, or tending to show, the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & Saint Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates;

"Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louisville & Nashville Railroad, and what amount, if any, of stocks, bonds, and other securities of the Nashville & Decatur Railroad and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad or any of its subsidiaries or holding companies;

"Sixth. Whether the Nashville & Decatur Railroad, the Lewisburg and Northern Railroad, and the Louisville & Nashville Railroad serve the same territory, in whole or in part, and whether, under separate ownership, these railroads would be competitive between various points in their territories;

"Seventh. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing or tending to show whether these relations restrict competition and maintain and fix rates;

"Eighth. Any fact or facts showing or tending to show (a) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & Saint Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict competition and maintain and fix rates, and (b) whether the lease of the Western & Atlantic Railroad by the Nashville, Chattanooga & Saint Louis Railway from the State of Georgia and the arrangement made between the Louisville & Nashville and the Nashville, Chattanooga and Saint Louis Railway by which the former uses the tracks of the said Western and Atlantic, restrict competition, restrain trade, and determine and fix rates;

"Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & Saint Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee rivers, and any dock or dock-yards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly, and restricts competition, and determines and fixes rates;

"Tenth. Any fact or facts showing or tending to show whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement;

"Eleventh. What amount of stock, if any, the Atlantic Coast Line Company, or Atlantic Coast Holding Company, owns in the Louisville & Nashville Railroad and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates;

"Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & Saint Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads; and,

"Thirteenth. (a) The number of free, annual passes; (b) the number of free-trip passes; (c) the number of every kind of free passes issued by each of said railroads each year since January first, nineteen hundred and eleven, to members of legislative bodies and other public officials or at the request of members of legislative bodies and other public officials; (d) the total mileage traveled upon free passes issued under each of the above classifications; and (e) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads;

"It is ordered, that a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

"It is further ordered, that this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents, and papers as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

"And it is further ordered, that a copy of this order be served upon each of the following-named railroad companies and upon any other companies which may hereafter be designated by the Commission:

Nashville, Chattanooga & St. Louis Railway;
Louisville & Nashville Railroad Company;
Nashville & Decatur Railroad Company;
Lewisburg & Northern Railroad;
Tennessee Midland Railroad Company;
Tennessee, Paducah & Alabama Railroad;
Western & Atlantic Railroad; and
Atlantic Line Railroad Company.

"By the Commission:
"(Signed) George B. McGinty,
"Secretary."

Office Supreme Court, U. S.
FILED
SEP 29 1917
JAMES D. MAHER
CLERK

No. 337.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

MILTON H. SMITH, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,
Counsel for the Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

SYNOPSIS AND INDEX.

Page.
STATEMENT OF FACTS 1

ARGUMENT:

I. The subject matter of this investigation is expenditures of the interstate carrier for the purposes named 7
II. The mere incident or purpose for which a lawful power is exerted affords no ground to deny its existence 8
III. This investigation was undertaken under the powers granted the Commission by the Act to regulate commerce and not under any power conferred by the Senate resolution 10
IV. Congress has power to obtain information concerning the expenditures of the funds of carriers engaged in interstate commerce 11
V. The subject of expenditures of the funds of carriers engaged in interstate commerce is a matter legally committed to the Commission for investigation by the Act to regulate commerce 16
VI. Information as to all expenditures of interstate carriers is necessary to the effective regulation of such carriers as provided by the Act to regulate commerce 22
VII. The decisions of this Court uphold the power legally committed to the Commission by Congress to inquire into expenditures of carriers 26
VIII. The *Harriman Case*, 211 U. S. 407, is not authority contrary to the principles contended for in this brief 32
IX. All of the questions asked the appellant, which he refused to answer, related to violations of the Act to regulate commerce or to the enforcement of the provisions of the Act or were concerning matters which might have been the object of complaint under the Act 36
X. The order of the Commission instituting the investigation neither limits nor extends the Commission's powers 42
XI. To require the appellant, as president of the Louisville & Nashville Railroad Company, to testify as to his knowledge of the expenditures of the funds of that carrier would not be an unconstitutional invasion of the privacy of the carrier. 49
XII. An interstate carrier has no constitutional right of privacy in its political activities, especially if these political activities involve the expenditures of the carrier's funds 51
XIII. The refusal of the appellant to answer questions material to a lawful inquiry of the Commission makes a proper basis for the application to the Court for an order requiring him to answer 53
CONCLUSION 54

TABLE OF CASES.

Page.
Arkansas Rate Cases, 187 Fed. 290 39
Baltimore & O. R. Co. v. *Int. Com. Com.*, 221 U. S. 612 13
Champion v. *Ames*, 188 U. S. 321 13
Chicago, B. & Q. Ry. Co. v. *Drainage Commissioners*, 200 U. S. 561 16
Chicago & G. T. Ry. Co. v. *Wellman*, 143 U. S. 339 38
Chicago Life Ins. Co. v. *Needles*, *113 U. S.* 574 13
County of Mobile v. *Kimball*, 102 U. S. 691 13
Dartmouth College v. *Woodward*, 4 Wheat. 517 14
Eagle Ins. Co. v. *Ohio*, 153 U. S. 446 13
Ellis v. *Int. Com. Com.*, 237 U. S. 434 32
Financial Transactions of the Chicago, R. I. & P. Ry. Co., 36 I. C. C. 43 38
Galveston Ry. Co. v. *Texas*, 210 U. S. 217 13
Gibbons v. *Ogden*, 9 Wheat. 1 13, 14
Gilman v. *Philadelphia*, 3 Wall. 713 13
Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196 13
Hale v. *Henkel*, 201 U. S. 43 14, 49
Hammond Packing Co. v. *Arkansas*, 212 U. S. 322 9, 43
Harriman Case, 211 U. S. 407 32, 33, 35
Hoke v. *United States*, 227 U. S. 308 13
In re Chapman, 166 U. S. 661 43, 47
In re Debs, 158 U. S. 564 13
Int. Com. Com. v. *Baird*, 194 U. S. 25 28, 37, 49
Int. Com. Com. v. *Brimson*, 154 U. S. 447 26, 47, 48, 54
Int. Com. Com. v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88 29
Int. Com. Com. v. *Cincinnati, N. O. & T. P. Ry. Co.*, 167 U. S. 479 30
Int. Com. Com. v. *Goodrich Transit Co.*, 224 U. S. 194 13, 14, 25, 32
Int. Com. Com. v. *Louisville & N. R. Co.*, 227 U. S. 88 30
Kansas City Southern Ry. Co. v. *United States*, 231 U. S. 423 31, 37
Kilbourn v. *Thompson*, 103 U. S. 168 46, 47
Louisville & N. R. Co. v. *Kentucky*, 161 U. S. 677 15
Northern Securities Co. v. *United States*, 193 U. S. 197 13
Olcott v. *The Supervisors*, 16 Wall. 678 15
Pacific Railway Commission Case, 32 Fed. 241 48
Philadelphia Steamship Co. v. *Pennsylvania*, 122 U. S. 326 13
Second Employers' Liability Cases, 223 U. S. 1 13
Sinking Fund Cases, 99 U. S. 700 13
Smyth v. *Ames*, 169 U. S. 466 15
Southern Pacific Ry. v. *Int. Com. Com.*, 200 U. S. 536 45
Southern Ry. Co. v. *United States*, 222 U. S. 20 13
Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426 30
United States v. *Delaware & H. Co.*, 213 U. S. 366 13
United States v. *Skinner*, 218 Fed. 870 46
United States v. *White Star Line*, 224 U. S. 194 25
Weber v. *Freed*, 239 U. S. 325 9
Wilson v. *New*, 243 U. S. 332 12
Wilson v. *United States*, 221 U. S. 361 50, 51
Wisconsin, M. & P. R. v. *Jacobson*, 179 U. S. 287 16

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

MILTON H. SMITH, APPELLANT, *v.* INTERSTATE COMMERCE COMMISSION, APPELLEE.	No. 337.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

STATEMENT OF FACTS.

This appeal is from a decree of the Supreme Court of the District of Columbia, directing the appellant to answer certain questions propounded by the Interstate Commerce Commission, hereinafter called the Commission, which appellant had refused to answer, at a hearing held by the Commission in an investigation of certain matters pertaining to the business of the Louisville & Nashville Railroad Company and other carriers.

On November 6, 1913, the Senate of the United States adopted a resolution requesting the Commission to inquire, among other matters, into certain expenditures of the Louisville & Nashville Railroad Company and other carriers. The twelfth paragraph of the Senate resolution reads as follows:

> What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads.

The expenditures inquired about in this paragraph may be classified as follows:

(1) Expenditure of funds of the carrier to prevent other railroads entering as competitors into its territory.

(2) Expenditure of funds of the carrier for maintaining legislative agents.

(3) Expenditure of funds of the carrier for political campaign contributions.

(4) Expenditure of funds of the carrier to create sentiment in favor of its plans.

There were other subjects embraced within the Senate resolution about which the Commission was directed to inquire, but as only questions relating to the expenditures of funds of the carrier were met with refusal to answer, that subject only is material.

The Commission on November 10, 1913, ordered an inquiry to be made, among other things, as to the above-mentioned subject of expenditures of the funds of the carrier. This order is set out in the petition and is shown in the record at page 3.

The Commission began a formal hearing at Nashville, Tennessee, on April 27, 1916, before Hon. B. H. Meyer, then chairman of the Commission. On April 29, 1916, the hearing at Nashville was adjourned and on May 4, 1916, was resumed in Washington, D. C., at which time Milton H. Smith, the president of the Louisville & Nashville Railroad Company, and its chief executive officer since 1884, was, after being duly subpœnaed, called as a witness by the Commission, and refused to answer certain questions relating to the expenditures of funds of the Louisville & Nashville Railroad Company.

The following are the questions which the witness refused to answer and which the court below required the witness to answer. (Record, pp. 38-39):

> Mr. Folk. I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad Company expended in the State of Tennessee for political campaign purposes during the year 1915 and charged on the books of that carrier to operating expenses?
>
> * * * * *
>
> Mr. Smith. On advice of counsel, I decline to answer.

Mr. Folk. Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?

* * * * *

Mr. Smith. On advice of counsel, I decline to answer.

* * * * *

Mr. Folk. Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway?

* * * * *

Mr. Smith. By advice of counsel, I decline to answer.

Mr. Folk. Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

* * * * *

Mr. Smith. By advice of counsel, I decline to answer.

* * * * *

Mr. Folk. Mr. Smith, among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor

of the Columbia Trust Company for $20,715.06 for special fees paid under direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher is for?

* * * * *

Mr. **Smith**. I refuse to answer, on the advice of counsel.

* * * * *

Mr. **Folk**. Can you tell us, Mr. Smith, why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

* * * * *

Mr. **Smith**. I refuse to answer, on advice of counsel.

* * * * *

Mr. **Folk**. Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000, issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no other information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

* * * * *

Mr. **Smith**. By advice of counsel, I refuse to answer.

* * * * *

Mr. **Folk**. Mr. Smith, did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately

> $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that State?
>
> * * * * *
>
> Mr. Smith. I refuse to answer that question, on advice of counsel.
>
> Mr. Folk. Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?
>
> * * * * *
>
> Mr. Smith. On the advice of counsel, I refuse to answer.
>
> * * * * *
>
> Mr. Folk. Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know, Mr. Smith?
>
> * * * * *
>
> Mr. Smith. On advice of counsel, I refuse to answer.
>
> * * * * *

The witness was duly directed to answer each question, which the witness refused to do. The Commission, thereupon, in accordance with the provisions of section 12 of the Act to regulate commerce, brought a petition to the Supreme Court of the District of Columbia praying that the witness be required to testify and answer the questions as directed by the Commission.

The appellant filed an answer denying that the Commission has jurisdiction under the Act to regulate commerce to inquire into the expenditures of the carrier's funds for political purposes.

The appellant in his answer also alleged that the questions asked him were to " delve into questions purely political " and alleged that the resolution of the United States Senate was introduced through spite and malice by United States Senator Lea and was adopted when " only 14 members of the Senate were present." The appellant further alleged that the Commission made no attempt to have a hearing or examine witnesses under its order of investigation until after Senator Lea was defeated for reelection to the Senate.

After argument upon the petition and answer, the court entered an order directing the appellant to answer certain questions as set out therein and detailed above. The opinion and order of Justice Wendell P. Stafford, of the Supreme Court of the District of Columbia, requiring the appellant to answer, are shown in the record at pages 29–39. From this order the appellant appeals to this Court.

ARGUMENT.

I.

The subject matter of this investigation is expenditures of the interstate carrier for the purposes named.

The subject matter of the investigation, as shown by the order of the Commission, is *expenditures* of the funds of the carrier: (1) For suppressing competition; (2) for maintaining political or legislative agents; (3) for contributing to political campaigns; and (4) for creating sentiment in favor of any of the plans of said railroads. These are merely descriptive of the particular kinds of the expenditures to be inquired about; they are merely classifications of the expenditures. The Commission, as we contend, has power to inquire into all expenditures of funds of the carrier. Instead of inquiring into every character of expenditures of the carrier, the Commission, by this order, proposes to inquire only into certain classes of expenditures. The appellant seizes hold of the classifications of the expenditures to be inquired about and argues that the classifications are the subject matter of this inquiry. The order of the Commission is as plain and clear as the English language can make it in stating the subject matter of the investigation to be "*what amount,*" if any, the carriers have "subscribed, expended, or contributed" for the purposes named.

II.

The mere incident or purpose for which a lawful power is exerted affords no ground to deny its existence.

The appellant argues that the real purpose of the investigation is to inquire into the political activities of the carrier, and that the expenditures are merely the measure of these activities. But the question here is as to power, not as to purpose. The motives inspiring an act of a branch of government can not properly be the subject of inquiry. The act must speak for itself.

The case of *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 348, was a proceeding brought by the State of Arkansas against the Hammond Packing Company to enforce the antitrust laws of the State of Arkansas. A commission was appointed to take testimony and a subpœna was issued requiring the Hammond Packing Company to produce certain papers before the Commission. The Hammond Packing Company objected to producing these papers and alleged, among other grounds for refusal, that the real purpose of asking it to produce the papers was to get evidence in some other proceeding against it, and not in the particular case then before the Commission. This Court, in answering that objection, said, page 348:

> As these subjects were within the scope of the visitorial power of the State and concerning which it had the right to be fully informed, the mere incident or purpose for which the lawful power was exerted affords no ground to deny its existence.

In the case of *Weber* v. *Freed*, 239 U. S. 325, Congress had passed a law prohibiting the importation of moving-picture films of prize fights into the United States. It was claimed that the real purpose of Congress was to prohibit the public exhibition of moving-picture films of prize fights, and that, as Congress had no power to prohibit the public exhibition of such moving-picture films, therefore Congress had no power to prohibit the importation of these moving-picture films in order to keep them from being publicly exhibited. This Court said, page 330:

> Moreover, the proposition plainly is wanting in merit, since it rests upon the erroneous assumption that the motive of Congress in exerting its plenary power may be taken into view for the purpose of refusing to give effect to such power when exercised.

The reason for this rule is self-evident. If the allegations in the answer of the appellant as to the motives of the Senate in passing the resolution, as to there being only 14 members of the Senate present, as to the motives of the Commission, and as to the political activities of Senator Luke Lea, were material, then it would have been competent to take evidence upon these subjects and this proceeding would have been prolonged *ad infinitum* without any light being given on the only question in this case, which is whether under the law the Commission has jurisdiction to inquire into these expenditures of the funds of the carrier.

III.

This investigation was undertaken under the powers granted the Commission by the Act to regulate commerce and not under any power conferred by the Senate resolution.

The Commission needed no addition to its powers to investigate the expenditures referred to in the Senate resolution, and the Senate resolution did not add to or subtract from those powers.

The authority to investigate the expenditures of carriers has been expressly conferred upon the Commission by Congress through the Act to regulate commerce.

That portion of the resolution of the Senate here involved has specific reference to the expenditures of the funds of the carrier. If the Commission could on its own motion investigate the expenditures of the carrier, it had no less power to investigate such expenditures because requested to do so by the United States Senate.

Any person, corporation, or organization could, by complaint, resolution, or petition, request the Commission to investigate the rates, practices, or expenditures of a carrier subject to the Act, and the Commission may, in its discretion, institute an investigation in compliance therewith or may do so on its own motion. What any person, corporation, or organization may do with respect to asking action by the Commission, certainly, to say the least, the United States Senate may do.

IV.

Congress has power to obtain information concerning the expenditures of the funds of carriers engaged in interstate commerce.

(1) The appellant, Milton H. Smith, was not asked with respect to the expenditures of his personal funds. The questions related merely to his knowledge of the expenditures of the funds of the Louisville & Nashville Railroad Company. He re-

fused to answer these questions on the advice of counsel, based on the alleged ground that the Commission has no jurisdiction to inquire into such expenditures, thereby claiming that such expenditures of the funds of the carrier are private and confidential and immune from governmental inquiry. How and when did the expenditures of funds of a carrier engaged in interstate commerce become private and confidential? A railroad, like any other corporation, must act through its officials. Its expenditures, of course, are made through its officers. Nevertheless, they are the expenditures of the railroad, and not the personal expenditures of the officers of the railroad. The financial transactions of a railroad engaged in interstate commerce are not the private affairs of those who operate the carrier, for it takes its charter subject to governmental regulation and governmental visitation.

(2) The power of the Federal Government over carriers engaged in interstate commerce is plenary and complete. In *Wilson* v. *New,* 243 U. S. 332, 352, this Court, through the Chief Justice, in upholding the Adamson law, said:

> As engaging in the business of interstate commerce carriage subjects the carrier to the lawful power of Congress to regulate irrespective of the source whence the carrier draws its existence, and as also by engaging in a business charged with a public interest ***all the vast property and every right of the carrier*** become subject to the authority to

> regulate possessed by Congress to the extent that regulation may be exerted considering the subject regulated and what is appropriate and relevant thereto. * * * [Italics ours.]

The following cases amply sustain the regulatory power exercised by Congress in conferring upon the Commission authority to investigate the business of interstate carriers: *Gibbons* v. *Ogden*, 9 Wheat. 1; *Northern Securities Company* v. *United States*, 193 U. S. 197, 335, 336; *Gilman* v. *Philadelphia*, 3 Wall. 713, 725; *County of Mobile* v. *Kimball*, 102 U. S. 691, 696; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 204; *Hoke* v. *United States*, 227 U. S. 308, 320; *Champion* v. *Ames*, 188 U. S. 321, 345; *United States* v. *Delaware & H. Co.*, 213 U. S. 366; *Southern Railway Company* v. *United States*, 222 U. S. 20, 27; *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612, 619; *Second Employers' Liability Cases*, 223 U. S. 1, 48; *In re Debs*, 158 U. S. 564; *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S. 326, 336, 337; *Galveston Ry. Co.* v. *Texas*, 210 U. S. 217, 227; *Sinking Fund Cases*, 99 U. S. 700, 722; *Eagle Insurance Co.* v. *Ohio*, 153 U. S. 446, 455; *Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574, 580; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 215.

(3) The Federal Government has the same power of *visitation* over carriers engaged in interstate commerce that the States have with respect to franchises granted by the State.

> The State is the visitor of all corporations founded by it for public purposes. Words and Phrases, IV, 1190.

In the United States the legislature is the visitor of all corporations created by it. 1 Cooley's Blackstone, 482; *Dartmouth College* v. *Woodward,* 4 Wheat. 517, 583.

The visitorial power is a necessary incident to the power of regulation, for the power of regulation would be worthless without the right to see and be informed as to the matters to be regulated.

> The visitation of railways in England is vested in the Board of Trade, and in America in the several state railroad commissions and the Interstate Commerce Commission. Beach on Corporations, sec. 833, vol. 2, p. 1303.

This Court, through Mr. Justice Day in *Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194, 215, said:

> And it is argued that Congress has no visitorial power over state corporations. We need not reassert the ample power which the Constitution has been construed to confer upon Congress in the regulation of interstate commerce, declared in the many cases in this Court, from *Gibbons* v. *Ogden,* 9 Wheat. 1, to its most recent deliverances.

In *Hale* v. *Henkel,* 201 U. S. 43, 75, this Court said:

> Being subject to this dual sovereignty, the General Government possesses the same

> right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State.

(4) Railroads are governmental agencies and they exercise their functions subject to the right of the Government to be kept fully informed as to their financial activities.

In *Olcott* v. *The Supervisors,* 16 Wall. 678, 695, the Court said:

> It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the State. * * * That all persons may not put their own cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge.

In *Louisville & Nashville R. Co.* v. *Kentucky,* 161 U. S. 677, 696, it was said:

> * * * but it has been too often held that railways were public highways, and their functions were those of the State, though their ownership was private, and that they were subject to control for the common good, to be now open to question.

In *Smyth* v. *Ames,* 169 U. S. 466, 544, the Court said:

> A railroad is a public highway, and none the less so because constructed and main-

> tained through the agency of a corporation deriving its existence and powers from the State.

In *Wisconsin, Minnesota & Pacific Railroad* v. *Jacobson*, 179 U. S. 287, 296, it was said:

> Constituting public highways of a most important character, the function of proper regulation by the Government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions.

In *Chicago, B. & Q. Ry. Co.* v. *Drainage Commissioners*, 200 U. S. 561, 588, the Court declared:

> It has been so often said that it need only be adverted to here, that corporations such as appellant (railroad) do not hold their property and exercise their franchises strictly in a private right, but that from the nature of their business and their relation to society they are public corporations in a sense and are subject to public control and regulation, * * *.

V.

The subject of expenditures of the funds of carriers engaged in interstate commerce is a matter legally committed to the Commission for investigation by the Act to regulate commerce.

(1) Section 12 of the Act to regulate commerce as amended provides:

> That the Commission hereby created shall have authority to inquire into the manage-

> ment of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; * * * and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

The investigational power here delegated and described is broad and sweeping. It includes all things done by carriers that are pertinent and material to the supervisory duties of the Commission.

The authority given and duty imposed upon the Commission by section 12 may be thus summarized:

> First. To "inquire into the management of the business of all common carriers subject to the provisions of this Act."
>
> Second. To "keep itself informed as to the manner and method in which the same is conducted."
>
> Third. To "obtain from such common carriers full and complete information nec-

> essary to enable the Commission to perform the duties and carry out the objects for which it was created."
>
> Fourth. To "execute and enforce the provisions of this Act."

That this section gives the Commission power to be informed as to expenditures of carriers would seem to be self-evident. How is the Commission to keep itself informed as to the manner and method in which the business of the carrier is conducted? Could it be fully informed without information as to the expenditures of the funds of the carrier? Are not the manner, method, and purposes of the expenditures of the funds of the carrier of prime importance if the Commission is to keep itself informed as to the business of the carrier?

Could an examiner of a national bank fully inform himself as to the business conducted by the national bank without information as to the expenditures of the funds of the bank? Suppose a national bank should deny information to the Government as to its funds expended for political purposes on the ground that the Government has no right to inquire into expenditures of that character. To state such a proposition is to answer it.

The officers of the railroad hold the corporate funds and corporate records subject to the corporate railroad duty. An officer of a railroad who refuses to answer questions relating to the expenditures of the funds of the railroad is, *in violation of section 12,* withholding information that it is the legal duty of the railroad to furnish the Commission upon proper demand being made therefor.

(2) Under section 13 of the Act the Commission is given—

> full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made * * * *or concerning which any question may arise under any of the provisions of this Act or relating to the enforcement of any of the provisions of this Act.* And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition * * *. [Italics ours.]

In seeking information as to the expenditures of the funds of the carrier, the Commission is enforcing the provisions of the Act to regulate commerce, which requires it to be kept informed as to such matters.

(3) Section 20 of the Act authorizes the Commission to require from carriers subject to the Act a complete exhibit of their financial operations. This section states:

> That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and * * * to require from *such carriers specific answers to all questions upon which the Commission may need information.*

> Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; *the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year,* including an annual balance sheet. * * * The Commission shall also have authority by general or special orders to require said carriers, or any of them, to *file monthly reports of earnings and expenses,* and to file periodical or special, or both periodical and special, reports *concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce;* * * *. [Italics ours.]

Section 20 further provides:

> Any person who shall * * * willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions apper-

> taining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, * * *.

And again:

> The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda * * * including the accounts, records, and memoranda of the movement of traffic as well as the receipts and *expenditures of moneys.* The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, * * *. [Italics ours.]

The questions asked the appellant were regarding expenditures which, in violation of section 20, are not properly shown by the carrier's books. To what account are political expenditures charged? Operating? Construction? Profit and loss? The books do not reveal. The witness refuses to tell.

If the books of the carrier had properly reflected its expenditures, as required by section 20, it would not have been necessary to ask the questions of the witness touching his knowledge of these expenditures. May a carrier, by keeping its books contrary to the Act, relieve itself of the positive obligations of the Act to furnish the Commission information upon demand as to its expenditures? Are the unrevealed and unknown regions beyond the books, which may abound in devices and arrangements not of record, sacred and immune from governmental inquiry?

VI.

Information as to all expenditures of interstate carriers is necessary to the effective regulation of such carriers as provided by the Act to regulate commerce.

It is unnecessary to refer at length to the secret evils and secret practices long indulged in by the railroads of the country which occasioned the demand for, and finally resulted in, the enactment by Congress of the Act to regulate commerce; but some of them as set forth in the report of the Senate Committee which investigated the whole subject may be mentioned:

> The complaints against the railroad systems of the United States expressed to the committee are based upon the following charges:
>
> * * * * *
>
> 7. That the effect of the prevailing policy of railroad management is, by an elaborate system of *secret* special rates, rebates, drawbacks, and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.
>
> 8. That such favoritism and *secrecy* introduce an element of uncertainty into legitimate business that greatly retards the development of our industries and commerce.

> 9. That the *secret* cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.
>
> *   *   *   *   *
>
> 16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.
>
> *   *   *   *   *
>
> 18. *That the management of the railroad business is extravagant and wasteful,* * * *. [Italics ours.]
>
> See Report Senate Select Committee on Interstate Commerce, January 18, 1886, p. 181.

In order to remedy these abuses provisions of a regulative, corrective, and visitorial character were incorporated into the Act to regulate commerce. As ancillary to these provisions the publication of all traffic charges was required, and charging more or less than published rates forbidden. But the enactment of these regulative provisions was not alone sufficient to remedy the evils. So the Commission was given broad visitorial powers over railroad companies subject to the Act.

In fact, the Act to regulate commerce employs such comprehensive language in granting the Commission power to be kept informed as to the business of carriers, including, of course, the expenditures of carriers, that every expenditure of a carrier engaged in interstate commerce must be exhibited to the Commission if called for. To permit a carrier to withdraw any of its expenditures from the scrutiny of the Commission would defeat the purposes of the Act; to exempt any class of expenditures of the carrier from examination by the Commission would enable the carrier to conceal the expenditures it desires to keep secret in the restricted class, and render the act of Congress a nullity. No exception is made in the Act to regulate commerce as to the right of the Commission to be informed concerning the expenditures of carriers. The visitorial power is absolute.

The Commission has authority to inquire into political expenditures, not because they are political expenditures, but because the Commission has power and duty to be kept informed as to *all* expenditures of a carrier's funds, and the fact that an expenditure may be for political purposes does not exclude the jurisdiction of the Commission as to that expenditure.

Political expenditures do not differ from other expenditures, in so far as the Commission's jurisdiction over interstate carriers goes.

The authority and duty to be kept informed as to the business of carriers given to the Commission by the Act to regulate commerce to be effective must be unlimited as to all expenditures of the carrier for whatever purpose.

The power asserted in this proceeding is not the power to regulate the carrier's expenditures or to control the carrier's expenditures, but the power of the Commission to keep itself *informed* as to the carrier's expenditures.

In *Interstate Commerce Commission* v. *Goodrich Transit Company* and *United States* v. *White Star Line*, 224 U. S. 194, this Court, in its opinion submitted through Mr. Justice Day, said, page 211:

> If the Commission is to successfully perform its duties in respect to reasonable rates, undue discriminations and favoritism, it must be informed as to the business of the carriers by a system of accounting which will not permit *the possible concealment of forbidden practices in accounts which it is not permitted to see and concerning which it can require no information.* It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, *but to be informed concerning the business methods of the corporations subject to the Act that it*

> ***may properly regulate such matters as are really within its jurisdiction.*** **Further, the requiring of information concerning a business is not regulation of that business.** [Italics ours.]

The fact, therefore, that expenditures may or may not be within the regulatory power of the Commission does not affect the power of the Commission to keep itself informed as to the expenditures.

The question for decision is, if a carrier makes contributions of its funds for political purposes, or to suppress competition, or to create public sentiment, may it *secrete* such expenditures of its funds, decline to have its books show such expenditures, and refuse the demand of the Commission for information as to such expenditures?

VII.

The decisions of this Court uphold the power legally committed to the Commission by Congress to inquire into expenditures of carriers.

Section 12 of the Act to regulate commerce was held constitutional by this Court in the case of *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447. This case arose out of an investigation by the Commission as to whether the Illinois Steel Company owned a number of short-line railroads and operated them as devices to obtain unjust and unreasonable rates. The witness Brimson refused to answer questions as to the ownership of these lines by the Illinois Steel Company. Thereupon the Commission filed a petition in the Circuit Court of the United States asking for an order of the court to compel the witness to answer. In answer to the contention that section 12 authorizing the Commission to call witnesses and require testimony was unconstitutional, the Court, through Mr. Justice Harlan, said (154 U. S. 447, 472–474):

> The same observation may be made in respect to those provisions empowering the Commission to inquire into the management of the business of carriers subject to the provisions of the Act, *and to investigate the whole subject of interstate commerce as conducted by such carriers, and in that way to obtain full and accurate information of all matters involved in the enforcement of the act of Congress.* It was clearly competent for Congress, to that end, to invest the Commission with authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents relating to any matter legally committed to that body for investigation. * * *

Continuing on page 474, the Court said:

> All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, otherwise than

> through the instrumentality of an administrative body, representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, *but of compelling by all lawful methods obedience to such rules.* [Italics ours.]

In *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, a witness in an investigation conducted by the Commission refused to answer certain questions and produce certain documents. The Commission filed a petition with the court asking for an order to compel the witness to answer and produce the documents. This Court, through Mr. Justice Day, said, page 41:

> The railroads are all engaged in interstate commerce, and into their affairs and methods of doing business the Commission might be, and is, lawfully authorized by the commerce act to make investigation.

The Court stated, page 43:

> It is to be remembered in this connection that we are not dealing with the ultimate fact of controversy or deciding which of the contending claims will be finally established. This is a question of relevancy of proof before a body not authorized to make a final judgment, but to investigate and make orders which may or may not be finally embodied in judgments or decrees of the court.

Continuing, the Court said, page 44:

> The inquiry of a board of the character of the Interstate Commerce Commission should

> not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof.

Again, the Court said, page 46:

> Undoubtedly the courts should protect non-litigants from unnecessary exposure of their business affairs and papers. But it certainly can be no valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it.

Again, on page 47, the Court said:

> To unreasonably hamper the Commission by narrowing its field of inquiry beyond the requirements of the due protection of rights of citizens will be to seriously impair its usefulness and prevent a realization of the salutary purposes for which it was established by Congress.

Referring specifically to section 12 of the commerce act, the Court in *Int. Com. Com.* v. *Chicago, R. I. & P. Ry. Co.,* 218 U. S. 88, 103, said:

> The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore

> are complex and difficult, the means of solving them are as great and adequate as can be provided.

In *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. R. Ry. Co.,* 167 U. S. 479, 506, the Court, through Mr. Justice Brewer, said:

> But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business.

In the case of *Interstate Commerce Commission* v. *Louisville & N. R. Co.,* 227 U. S. 88, 93, the Court, through Mr. Justice Lamar, said:

> The information gathered under the provisions of section 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes * * *.

In *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.,* 204 U. S. 426, 438, the Court, through Mr. Justice, now Chief Justice White, said:

> The Commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs,

> their accounts and their methods of dealing, and generally to enforce the provisions of the Act.

In *Kansas City Southern Ry. Co.* v. *United States,* 231 U. S. 423, the carrier expended funds in rebuilding a portion of its line and charged these funds to property account. The Commission ordered that they should be charged to the operating account, and this order was sustained by this Court. If the Commission had no power to obtain information as to the expenditures of the funds, it could not order the account in which the expenditures should appear, for how could such a requirement be made without information as to the expenditures of the funds?

Section 20 was construed in this case, in which Mr. Justice Pitney said, pages 440, 441:

> The very object of a system of accounts is to display the pertinent *financial operations* of the company, and throw light upon its present condition. * * * So far as such uniformity requirements control or tend to control the conduct of the carrier in its capacity as a public servant engaged in interstate commerce, they are within the authority constitutionally conferred by Congress upon the Commission. There is no direct interference with the internal affairs of the corporation; and if any such interference indirectly results, it is only such as is incidental to the lawful control of the carrier by

> the federal authority and to this the rights of stockholders and bondholders alike are necessarily subject. [Italics ours.]

Section 20 was again considered by this Court in the case of *Interstate Commerce Commission* v. *Goodrich Transit Company, supra.* The Court held that the Commission had power under this section to be fully informed as to all business done by the carrier, and that power to regulate a part of a carrier's business carried with it power to be informed as to all, in order to intelligently exercise the power of regulation as to a part.

In the case of *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, a witness refused to answer questions in an investigation before the Commission, and the Commission petitioned the court to compel the witness to answer. This Court ruled that the witness should answer all questions relating to common-carrier affairs, but that he need not answer questions concerning the private business of the Armour Car Lines, not a common carrier. This case is authority for the proposition contended for here, that the witness should be compelled to answer as to the expenditures of funds of the *common carrier.*

VIII.

The Harriman Case, 211 U. S. 407, is not authority contrary to the principles contended for in this brief.

(1) The questions propounded to Harriman and Kahn related to their *private* ownership of stocks. The *Harriman Case* involved the private affairs of

individuals. The present case concerns the expenditure of funds of a public carrier corporation over which the Government has the most complete visitorial powers. The rule laid down in the *Harriman Case*, 211 U. S. 407, 419, that only in investigations of violations of the Act or matters that might have been made the object of complaint can the Commission compel the attendance and testimony of witnesses, is applied in that opinion and was, we think, meant to apply only to witnesses testifying as to *individual matters*. This rule was never meant to be applied to an official of a carrier testifying as to his knowledge of the business of the *carrier*. The witnesses in the *Harriman Case* had not declined to answer questions concerning the ownership of stock by the carrier under investigation. In the argument for one of the appellants, Kahn, appears this significant statement, page 410:

> The general power of the Commission to inquire into the management of the business of common carriers does not authorize these questions.
>
> *The questions related to the private business of Kuhn, Loeb & Co., and not to the business of the Union Pacific.* [Italics ours.]

The *Harriman Case* lays down the doctrine that the privacy of an individual as to his personal affairs can only be invaded where a breach of the law is concerned. To extend this principle so as to destroy the Commission's power of inquiry into the business of an *interstate carrier* would be to give to that decision a meaning the Court could not have intended.

It is manifest that there can be no power of inquiry into a carrier's affairs without the accompanying authority to exact evidence relating to the business of the carrier, from its officials. Except as they testify and as its books disclose the expenditures of its funds, the carrier itself is dumb. It would be an empty authority to grant the power of examining a carrier's accounts without the power to ask carrier officials questions as to the accounts of the carrier. The power of the Commission to be kept informed as to the carrier's business would be worthless if the carrier officials can refuse to testify as to their knowledge of the business of the carrier.

In the *Harriman Case* the Court spoke of the power claimed as " unparalleled in its vague extent." The unparalleled power the Court referred to was stated on page 417 of 211 U. S. to be the power to summon witnesses and " require them to disclose any facts no matter how private, no matter what their tendency to disgrace the person whose attendance has been compelled." No such power is asserted in this proceeding. There are no *private matters* concerned, and the questions refer alone to the expenditures of a *railroad corporation* engaged in interstate commerce.

(2) Moreover, the reasoning applied in the *Harriman Case* is no longer applicable because section

13, upon which the Court based its conclusion, has been amended since the decision to meet the objection pointed out. In that case, 211 U. S. 407, 420, the Court said:

> * * * it is plain that at that time there was no thought of allowing witnesses to be summoned except in connection with a complaint for contraventions of the Act, such as the Commission was directed to "investigate" by section 13, or in connection with an inquiry instituted by the Commission, authorized by the same section, "in the same manner and to the same effect as though complaint had been made." Obviously such an inquiry is limited to matters that might have been the object of a complaint.
>
> The plain limit to the authority to institute an inquiry given by section 13, and the duty to make a report with findings of fact, etc., in the section next following, with hardly a word between, hang together, and show the purposes for which it was intended that witnesses should be summoned.

Section 13, at the time the *Harriman Case* was decided, read in part as follows:

> Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

But section 13 was amended by the next session of Congress, 1910, after the decision in the *Harriman Case*, so that it now reads:

> * * * and *the Interstate Commerce Commission shall have full authority and power at any time to* institute *an* inquiry, on its own motion, *in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act.* [The words in italics indicate the words added by the amendment.]

The meaning of section 13 has been changed by this amendment.

After giving authority to investigate on its own motion any matter or thing concerning which a complaint is authorized to be made, a further authority is conferred to investigate of its own motion any matter or thing "*concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act.*"

IX.

All of the questions asked the appellant, which he refused to answer, related to violations of the Act to regulate commerce or to the enforcement of the provisions of the Act or were concerning matters which might have been the object of complaint under the Act.

(1) Under section 1 the rates of carriers are required to be reasonable. If the funds of the carrier

are wastefully expended in campaign contributions and otherwise, the result must be either an increase of rates by the carrier or lessened efficiency. There is a distinct relation between expenditures and the reasonableness of rates.

In the case of *Kansas City Southern Ry. Co.* v. *United States,* 231 U. S. 423, 445, the Court, through Mr. Justice Pitney, said:

> Since the regulation of the railroad carrier by the public authority, and especially the fixing of the rates to be charged, depend primarily upon two fundamental considerations, (*a*) the value of the property that is employed in the public service, and (*b*) the current cost of carrying on that service, it is clear that the maintenance of a proper line of distinction between property accounts and operating accounts is essential to the execution by the Interstate Commerce Commission of the supervisory and regulatory powers conferred upon it by Congress.

The conception of rate regulation is largely based upon the legitimate expenditures of earnings. The cost of the service is an element in rate regulation.

In the *Baird Case,* 194 U. S. 25, 47, the Court said:

> Furthermore, we think the testimony competent as bearing upon the manner in which transportation rates are fixed, in view of determining the question of reasonableness of rates, into which the Commission has a right to inquire.

In *Chicago & G. T. Ry. Co.* v. *Wellman*, 143 U. S. 339, 345, the Court said:

> Of what do these operating expenses consist? Are they made up partially of extravagant salaries? * * * Surely, before the courts are called upon to adjudge an act * * * fixing the minimum passenger rates * * * to be unconstitutional, * * * they should be fully advised as to what is done with the receipts and earnings of the company; * * *.

The appellant upon the witness stand testified as follows (Record, pp. 6–7):

> Mr. FOLK. Suppose the Louisville & Nashville Railroad Company were to give to the Republican campaign fund or the Democratic campaign fund the sum of $500,000, would that affect the rates in any way?
>
> Mr. SMITH. Not in the slightest.
>
> Mr. FOLK. Suppose it were to make a political campaign contribution of $5,000,000?
>
> Mr. SMITH. Not the slightest.
>
> Mr. FOLK. Suppose it should make a contribution of $20,000,000.
>
> Mr. SMITH. Not the slightest. It has nothing to do with the adjustment of rates.

The following quotation is appropriate here:

> Those stating this opinion apparently did not take into consideration the fact that if the funds derived from transportation services are expended wastefully or corruptly the inevitable result must be either increased charges in order to enable the railway com-

> pany to obtain money to pay operating expenses, or bankruptcy. *Financial Transactions of the Chicago, Rock Island & Pacific Ry. Co.*, 36 I. C. C. 43, 48.

In the *Arkansas Rate Cases*, 187 Fed. 290, 313, the court said:

> While there can be no doubt that the company has a right, in so far as it alone is concerned, to give away any of its property, * * *, it has no right to complain, and insist upon higher rates to enable it to act generously toward favorites. Generosity cannot be practiced at the expense of justice, nor should it be permitted to be dispensed at the cost of others.

(2) Under section 2 of the Act it is made an unlawful discrimination for any carrier subject to the Act " directly or indirectly, by any special rate, rebate, drawback, or other device," to charge or collect from any person or persons a greater or less compensation for any service rendered in the transportation of passengers or property than that charged or collected from any other person or persons for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

If the Commission has jurisdiction to investigate expenditures for rebating, it certainly has jurisdiction to investigate expenditures to determine whether or not, while ostensibly for political purposes to influence public sentiment, or to suppress competition, in reality they are rebates or drawbacks. How is the Commission to know unless it can obtain information as to the purposes of the expenditures?

(3) Under section 3 of the Act it is made unlawful for any carrier subject to the Act to give any "undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality or any particular description of traffic." The donating of funds of a carrier to any person, firm, corporation, or locality undoubtedly is a matter that might be the object of complaint and concerning which a question may arise under this section as to whether such donation of the funds of the carrier could be construed as giving to such person, firm, or corporation an undue or unreasonable preference.

United States Senator Luke Lea filed a complaint before the Commission, which complaint, the record shows, was consolidated with this proceeding, alleging that the giving of free intrastate transportation by the Louisville & Nashville Railroad Company operates as a discrimination against interstate commerce under section 3 of the Act to regulate commerce. A complaint might likewise be filed alleging the funds of the carrier are given away to such an extent for intrastate political campaigns as to work a discrimination against and to become a burden upon interstate commerce.

(4) The refusal of the carrier or its officers to give information to the Commission as to its expenditures violates section 12 of the Act, which re-

quires such information to be given the Commission upon demand.

(5) The expenditures of the carrier's funds may be the object of a complaint and concerning which a question may arise under section 15 of the Act, which authorizes the Commission to determine what regulations or practices of carriers are just, fair, and reasonable.

(6) Under section 19a the matter of expenditures of a carrier is a subject legally committed to the Commission for investigation, for it is distinctly made the duty of the Commission by this section to ascertain and report as to carriers subject to the Act " upon the expenditure of all moneys and the purposes for which the same were expended."

(7) The expenditures of the carrier may be the object of a complaint and concerning which a question may arise under section 20. If the books of the carrier do not properly reflect the expenditures, as apparently the books of the carrier under consideration do not, then the provisions of section 20 are violated. Under this section it is also made the duty of the carrier to make to the Commission " a complete exhibit of the financial operations of the carrier each year." The making of expenditures and failing to record them properly involve complaints for possible violations of this section and concerning which a question may arise and regarding which a question has arisen here relating to the enforcement of the provisions of the Act.

(8) Section 21 of the Act provides that the Commission shall make an annual report to Congress:

> This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; * * *.

Under section 13, as amended in 1910, the Commission is given authority to investigate any matter connected with interstate carriers "relating to the enforcement of any of the provisions of this Act." Section 21 is one of the provisions of the Act, the enforcement of which is necessary in order that Congress may have the full information required to intelligently legislate with respect to the regulation of interstate carriers.

X.

The order of the Commission instituting the investigation neither limits nor extends the Commission's powers.

If it be contended that the order of the Commission instituting this inquiry should have indicated the purpose of the Commission to discover these violations of the Act, the answer is, the subject matter of the investigation being within the jurisdiction of the Commission, the mere incident or purpose for which the lawful power was exerted affords no ground to *deny its existence. Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 348.

In the case of *In re Chapman*, 166 U. S. 661, a resolution of the United States Senate directed a committee of the Senate to inquire whether any Senator had been speculating in sugar stocks during the consideration of the tariff bill before the Senate. Chapman, who was engaged in the brokerage business, was called as a witness and asked whether he had bought or sold any sugar stocks for any Senator. He refused to answer on the ground that the matter was beyond the jurisdiction of the Senate and that it was an inquiry into his personal affairs. The Court, through then Chief Justice Fuller, said, pages 668, 669:

> The questions were undoubtedly pertinent to the subject matter of the inquiry. The resolutions directed the committee to inquire "whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers.

> Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolutions did not specify that the proceedings were taken for the purpose of censure or expulsion, if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate.

So in this case it can not be said that the Commission has no jurisdiction to pursue this inquiry because its order did not specify that the investigation was for the purpose of discovering violations of the Act if certain facts were disclosed by the investigation. What the Commission will or will not do upon the facts when ascertained is not necessary to be determined now.

The contention that the Commission should say before it begins an investigation whether it intends that the evidence to be adduced shall affect rates, affect valuation, or affect any of the other duties of the Commission under the Act to regulate commerce would imply knowledge on the part of the Commission as to what the evidence will be. If the Commission had that information, it would not be necessary to conduct an investigation at all. The purpose of the investigation is to find out, to be kept informed, as to all of the expenditures of the funds of the carrier. Only these particular classes of expenditures are inquired about, for the manifest reason that the books show the other expenditures, while, as the questions indicate, the books do not give the required information as to these expenditures.

The Commission neither draws additional powers nor restricts its powers from its order instituting the investigation. The order is a notice to the carrier. If the investigation extends beyond the notice, the carrier might plead surprise and ask for time to prepare. There is no such claim in this case.

What was the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway notified that the Commission would investigate? The answer is, expenditures of those carriers made for certain purposes. The language of the twelfth paragraph is "What *amount*, etc." Does this imply political activity without regard to the expenditures of the carrier? Does this language restrict the investigation to efforts to suppress competition without crossing the line when those efforts call for funds? What is the fair meaning of the paragraph as a whole? Does it not mean amounts of money expended for the purposes named?

In considering the validity of an act of the Commission, its statutory power is the test. In *Southern Pacific Ry.* v. *Int. Com. Com.*, 200 U. S. 536, 556, 557, this Court said:

> We think that the court was not confined to those grounds, and if it found the rule was, in itself, for any reason illegal as a vio-

> lation of the Act, the order might be valid and be a lawful order, although the Commission gave a wrong reason for making it. If it held that the rule to be a violation of one section, the order to desist might be valid, if, instead of the section named by the Commission, the court should find that the rule was a violation of another section of the Act. All the facts being brought out before the Commission or the court, the court could decide whether the order was a lawful one, without being confined to the reasons stated by the Commission.

In *United States* v. *Skinner,* 218 Fed. 870, 873, the court said:

> The character of the investigation is rather to be determined by its subject-matter, its scope, and the resulting order of the Commission awarding the relief, than by the title of the cause, on the one hand, or by the recitals of the Senate resolution requesting it, on the other.

It was decided in the case of *Kilbourn* v. *Thompson,* 103 U. S. 168, 195, that neither House of Congress has the power through its committees to make inquiry into the mere private affairs of the citizen for the purpose of securing information concerning the fraudulent disposal of the assets of an insolvent debtor to the Government. An inquiry of this kind, the Court ruled, was purely judicial in its character and, the Court said, could result in no valid action by Congress on the subject to which the inquiry referred.

Comparing the *Chapman Case* with the *Kilbourn* v. *Thompson Case,* it is clear that the rule in determining whether the matter is within the investigational power of Congress is whether Congress may take valid action thereon, not necessarily by legislation, but any action that would be lawful and within the constitutional scope of Congressional powers. Applying this rule to the Commission, the limitation upon its investigational powers is whether it can take valid action upon the matter, not necessarily by an order, but any valid action under any of the provisions of the Act to regulate commerce.

An inquiry by the Commission into the expenditures of an interstate carrier refers to a subject matter within the jurisdiction of the Commission and concerning which the Commission may take valid action under the provisions of the Act.

The *Kilbourn* v. *Thompson* case was considered in *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, 478, as involving the right of Congress to make inquiry " into the private affairs of the citizen." In upholding the power of the Commission to examine witnesses in relation to the affairs of interstate *carriers,* the Court in the *Brimson Case* said, page 474:

> An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce and with power to call wit-

> nesses before it, and to require the production of books, documents, and papers relating to that subject, would go far toward defeating the object for which the people of the United States placed commerce among the States under national control.

It was held in the *Pacific Railway Commission Case*, 32 Fed. 241, that the Government, as a creditor, could not compel the production of information from its debtor before a nonjudicial board. Nor could it, said the court, compel the production before such a board of information concerning the *private affairs* of officers and employees of a corporation to whom it has loaned money. Such inquiries, the court ruled, are not within the legitimate scope or purpose of Government, and the processes of courts can not be invoked to compel answers to them.

In that case the act of Congress authorizing a Commission to make inquiries of the kind above suggested into the affairs of the Pacific railroads and their officers, and to have the aid of judicial process to compel answers to their inquiries, was held to be unconstitutional.

In so far, however, as that case may be considered as ruling that the court has no power to compel a witness to give testimony in a proceeding before a body such as the Interstate Commerce Commission, it has been overruled by this Court in the *Brimson Case*, 154 U. S. 447, which holds directly to the contrary.

XI.

To require the appellant, as president of the Louisville & Nashville Railroad Company, to testify as to his knowledge of the expenditures of the funds of that carrier, would not be an unconstitutional invasion of the privacy of the carrier.

(1) No individual constitutional rights are involved in this case. A railroad has no vested right of secrecy as against the Government in the expenditure of its funds. The constitutional provision regarding search and seizure applies only to *personal* matters, and the funds of a railroad engaged in interstate commerce are in no sense *personal* or *private*. The search and seizure clause of the Constitution does not impair the visitorial power of the Government over corporations. Every act done or transaction had with respect to the funds of the carrier must be open and fully disclosed to the Commission upon request.

In *Hale* v. *Henkel*, 201 U. S. 43, 75, the Court said:

> It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose.

In the case of *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 46, Mr. Justice Day, in disposing of the contention that to require Baird to appear before the Interstate Commerce Commission and produce certain papers amounted to an unreasonable search and seizure, said:

> Testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure.

In the case of *Wilson* v. *United States*, 221 U. S. 361, 382, the Supreme Court, through Mr. Justice Hughes, said:

> It can not resist production upon the ground of self-crimination. Although the object of inquiry may be to detect the abuses it has committed, to discover its violations of law, and to inflict punishment by forfeiture of franchises or otherwise, it must submit its books and papers to duly constituted authority when demand is suitably made. This is involved in the reservation of the *visitatorial* power of the State and in the authority of the National Government where the corporate activities are in the domain subject to the powers of Congress. [Italics ours.]

An officer of a corporation can not plead the criminality of the corporation as an answer to a demand for the inspection of the papers of the corporation; no more may an officer of an interstate railroad plead as an answer to a demand for information as to the expenditures of the funds of the railroad that the demand for such information is an unreasonable search or seizure as to the *corporation.*

(2) No personal privilege can justify an official of an interstate carrier in refusing to answer questions as to the expenditures of the corporate funds.

Again in *Wilson* v. *United States, supra*, pages 384, 385, the Court said:

> The reserved power of *visitation* would seriously be embarrassed, if not wholly defeated in its effective exercise, if guilty officers could refuse inspection of the records and papers of the corporation. *No personal privilege to which they are entitled requires such a conclusion.* It would not be a recognition, but an unjustifiable extension, of the personal rights they enjoy. They may decline to utter upon the witness stand a single self-criminating word. They may demand that any accusation against them individually be established without the aid of their oral testimony or the compulsory production by them of their private papers. But the *visitatorial* power which exists with respect to the corporation of necessity reaches the corporate books without regard to the conduct of the custodian. [Italics ours.]

XII.

An interstate carrier has no constitutional right of privacy in its political activities, especially if these political activities involve the expenditures of the carrier's funds.

The appellant, in his brief before the Supreme Court of the District of Columbia, at page 47, said:

> And, as we have said so often before in this brief, there is nothing in the Act to regu-

> late commerce which forbids a common carrier, if it sees fit to do so, to take a hand in politics. If a railroad corporation thinks that a particular candidate is trying to ride into office on a wave of prejudice in the public mind against that corporation, or by trying to arouse public passion against it, and the corporation on this account chooses to fight back, there is nothing in the Act to regulate commerce which forbids this; and, therefore, nothing in the Act which authorizes the Commission to inquire into what the corporation has done in this regard.

So far as we know no court has ever held, and it is to be hoped that no court will ever hold, that a railroad has a constitutional right to take a "hand" in politics. It is not chartered as a political machine; it is no part of its business to educate the public on political questions; and if the railroad of which appellant is president may take part in politics without any supervision by the Commission, without any power on the part of the Government to know what it is doing, then all other railroads may do the same. It takes no prophet to foretell what would happen if every railroad had the authority to do and the inclination to do what the railroad represented by the appellant claims the right to do and has evidenced a disposition to do.

In his brief filed in this Court appellant argues that because there is nothing in the Act to regulate commerce which forbids a carrier taking part in politics, therefore the Commission has no authority to inquire into what the corporation expends in political activities.

While the Act to regulate commerce may not forbid an interstate carrier taking part in politics, the Act does authorize the Commission to keep itself informed as to what interstate carriers are doing, even when they are taking part in politics, especially if, in taking part in politics, the interstate carrier expends funds which it has received from the transportation of passengers and of freight, which funds are in the nature of trust funds, and as to the expenditure of which the public, through its agency, the Commission, has the right to keep itself informed. The Act does forbid the carrier to expend its funds in politics, or in any other way, and then to conceal such expenditures from the Commission. In refusing information to the Commission as to such expenditures there is a violation of the Act.

XIII.

The refusal of the appellant to answer questions material to a lawful inquiry of the Commission makes a proper basis for the application to the Court for an order requiring him to answer.

This proceeding is expressly authorized by section 12 of the Act, which provides:

> And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the

> aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.
>
> * * * any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

In the *Brimson Case*, 154 U. S. 447, 487, the Court said that it was the legal duty of a witness to give testimony before the Commission relating to the business affairs of interstate carriers, and that the courts would compel the performance of this duty. The Court declared:

> One of the functions of a court is to compel a party to perform a duty which the law requires at his hands.

Again the Court said, page 488:

> The issue presented is not one of fact, but of law exclusively.

CONCLUSION.

The Commission has the legal right and is subject to the legal duty to keep itself informed as to carrier expenditures, and it is a step backward to the abuses of the past for any carrier serving the public to attempt to keep them secret. That secrecy in the matter of expenditures and rates has been the principal source of evils in the railroad business can not be denied. Corruption, discrimination, and favoritism breed in the dark and shun the light. The evils which might be fairly apprehended from governmental information as to the expenditures of the funds of interstate carriers are not to be compared with the evils that must surely result from secrecy.

Whether or not a carrier in contributing to a political campaign fund is within its rights, it is certainly not within its rights when it makes these expenditures in such a way that its books do not reflect the character of the expenditures; and the carrier is not within its rights when in violation of the Act it refuses information to the Commission concerning its expenditures; and an official of the carrier is not within his rights when in violation of the Act he declines to answer questions before the Commission concerning his knowledge of the expenditures of the carrier.

In the light of the principles that a railroad corporation is a creature of the State; that it is a legal entity existing only in contemplation of law; that it possesses only such rights and powers as are given by law; that it is at all times subordinated to the requirements of law and answerable to its demands, how can it be successfully maintained that the president of an interstate railroad may lawfully refuse to answer questions as to the expenditures of the funds of the carrier and thus secrete a part of its business from the Commission and vitiate the regulating statutes? There can be no effective regulation of interstate carriers if they may keep their expenditures covered up. Without information regulation would become impotent and blind; without vision there could be no supervision.

There can be nothing private or confidential in the expenditures of the funds of a carrier engaged in interstate commerce as against the visitorial power of the Commission. It must submit all of its business including its expenditures to the Commission upon suitable demand being made. That demand has been made in this case and it is to enforce that demand and to compel the carrier to perform its duty under the Act to regulate commerce by informing the Commission as to its expenditures that this proceeding is now before this Court.

Respectfully submitted.

JOSEPH W. FOLK,
Counsel for the Interstate
Commerce Commission.

O

SMITH v. INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 337. Argued October 2, 3, 1917.—Decided November 5, 1917.

The Senate, by resolution, directed the Interstate Commerce Commission to investigate, take proof and report to it, among other things, what amount, if any, certain railroad companies, or any of them, had subscribed, expended or contributed to prevent other railroads from entering any of their territory, for maintaining political or legislative agents, for contributing to political campaigns, or for creating sentiment in favor of any of the plans of any of the railroads. In pursuance of this resolution, the Commission ordered an investigation, which was consolidated with another, arising from a complaint made by an individual and limited to the alleged improper issuance of free passes. At the hearing the president of one of the companies, subpœnaed as a witness, was asked by the counsel for the Commission what, if any, funds his company expended, in certain States, in certain years, for political campaign purposes, and charged upon its books to operating or legal expenses or construction account; also to explain certain vouchers, showing expenditures by the company but not the purpose; also whether the company expended funds in a certain State "in a campaign against rate reductions," and whether it was the company's policy to make political compaign contributions. The witness having refused to answer, upon advice of counsel, the court below, upon the petition of the Commission, ordered him to do so.

Held: (1) That the investigation, particularly as related to and defined by the questions asked, was not to be regarded as directed to the political activities of the carrier or to its efforts to suppress competition, but as seeking to ascertain the amounts of expenditures made by the carrier, their allocation, and the manner in which they were charged upon its books.

(2) That such an investigation was within the competency of the Commission and the questions proper, in view of the general purposes and objects of the Act to Regulate Commerce, the regulatory power of the Commission in relation thereto, and the particular authority and

means given to enable it to perform its duty—viz: Authority under § 12 to inquire into the management of the business of carriers, keep itself informed as to the manner and method in which the same is being conducted, and to obtain from carriers full and complete information; under § 13, to institute inquiries of its own motion; under § 20, to require detailed accounts of the expenditures and revenues of carriers and exhibits of their financial operations;—and that the questions were pertinent to the duty of the Commission under § 21 to report information collected by it to Congress.

Under § 13 of the Act to Regulate Commerce, as amended by the Act of June 18, 1910, c. 309, 36 Stat. 550, § 11, the Commission's power of investigation is not necessarily confined to cases in which evils or abuses are definitely charged, and remedies are proposed, in words, either by the Commission or by parties complaining before it; nor, *semble*, is its right of inquiry in a particular proceeding necessarily to be measured by the scope of the proceeding as defined by the order instituting it.

44 W. L. Rep. 626, affirmed.

Petition of the Interstate Commerce Commission to require the attendance before it of appellant, president of the Louisville & Nashville Railroad Company, an interstate carrier, to answer certain questions theretofore asked him in a proceeding then pending before the Commission.

The petition described the Commission as an administrative tribunal and recited the powers conferred upon it by §§ 1, 15, 12, 13, 20 and 21 of the Act of Congress to Regulate Commerce, approved February 4, 1887, as subsequently amended.

That by a resolution of the United States Senate of November 6, 1913, the Commission was directed to investigate, take proof and report to the Senate as soon as practicable upon certain practices and financial relations of the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway and other carriers. The resolution was set out. Its twelfth paragraph is as follows:

"What amount, if any, the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, the Nashville and Decatur Railroad, and the Lewisburg and Northern Railroad, all or any of them, have subscribed, expended or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

The other paragraphs concern the relation of the railroads to one another, the control, if any, exercised by the Louisville & Nashville over the others, by stock ownership, leases or arrangements, and whether but for these the roads would be competitive and if through such means rates were fixed and maintained. The resolution is set out in full in *United States* v. *Louisville & Nashville R. R. Co.*, 236 U. S. 318, 324.

That thereafter the Commission instituted a proceeding in pursuance of such resolution and it was ordered that the proceeding be set for hearing at such times and places and that such persons be required to appear and testify or to produce books, documents and papers as the Commission might thereafter direct; and that the investigation be carried on in the meantime by such other means and methods as might be deemed appropriate. A copy of the order was served on the Louisville & Nashville and other railroads.

That subsequently, on March 20, 1916, the order of the Commission was amended by adding to the order the provision that after the hearings and investigations authorized the Commission might issue such order or orders in the matter as might be proper and necessary in the premises and that Case No. 8488, *Luke Lea* v. *Louisville & Nashville Railroad Company et al.*, be consolidated for hearing with the proceeding upon one record at such times and places as the Commission might direct. Copies of the order and original order were served on the railroads.

That pursuant to such orders a meeting was had April

27, 1916, and pursuant to adjournment resumed in the City of Washington May 4, 1916. At such hearings appellant appeared in response to a subpœna and certain questions were addressed to him.

He testified that there was no connection between the reckless dissipation of the funds of a railroad in political campaigns and the adjustment of reasonable rates, even if the contribution was of the sum of $500,000 or $20,000,000, as the adjustment of rates is governed by conditions entirely independent of the revenues of a railroad. In illustration he adduced the adjustment of rates of bankrupt roads operated by receivers of courts which he testified are handled in the same way and arrived at in the same manner as they are by solvent roads.

The following questions were then asked him by counsel for the Commission, omitting those not now relevant. We number them for convenience of reference:

1. "I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad expended in Tennessee for political campaign purposes during the year 1915 and charged upon the books of that carrier to operating expenses.

2. "Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?

3. "Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway? Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses?

4. "Among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under the direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher was for?

5. "Can you tell us why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?

6. "Among the vouchers found by the accountants for the Commission in the files of the Lousiville & Nashville Railroad, appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000 issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no further information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?

7. "Did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer, of that State?

8. "Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions?

9. "Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know?"

All of the questions the witness declined to answer upon the advice of counsel.

The answer of appellant to the petition challenged in general and in detail the power of the Commission and urged that the Commission is entirely a ministerial tribunal, having only the powers given it by act of Congress, and that those, with few exceptions, are confined to the enforcement of the act, and that the latter as amended "does not attempt to regulate the politics or the political activities of common carriers, nor the subject of their endeavoring to exclude competitors from their territories."

That the object of the questions asked by the Commission "was to delve into questions purely political" and to ascertain whether the witness or the company believed that a railroad company had a right to engage in political campaigns and to make political contributions and whether it had been the policy of the company to make contributions of funds to such campaigns and whether the company had in the past engaged in such practices. It is asserted that all such matters are outside of the jurisdiction of the Commission.

That the proceeding is a consolidation of two proceedings, Nos. 6319 and 8488, that Luke Lea is the open and sole complainant in the latter and the instigator and real complainant in the other, which was instituted by the Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by Lea, then a member of the Senate and the complainant in No. 8488, which is confined to an alleged improper issue of free passes.

Certain activities of Lea are stated and certain resentments and motives of his are urged as having actuated him and a want of power upon the part of the Commission is repeated and the refusal to answer the questions hence asserted to be justified.

The Commission moved to strike out certain portions of the answer, which was denied.

The court required appellant to answer the questions, and from its order this appeal is prosecuted.

Mr. Helm Bruce and *Mr. Edward S. Jouett,* with whom *Mr. Henry L. Stone* was on the brief, for appellant:

A witness may lawfully refuse to answer if the testimony called for does not relate to the matter under investigation or if the matter broached by the Commission is one which it is not legally entitled to investigate. *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447. The subject of an investigation is defined by the order of the Commission instituting the investigation. Every investigation which the Commission makes is not as broad as its power to investigate. The matter here under investigation according to the Commission's order was the matter "directed" to be investigated by the Senate Resolution. The language of the order is too plain for doubt. Nothing outside of the "several matters and things set forth and referred to in the said resolution" is ordered to be investigated. See Solicitor General's brief in *United States* v. *Louisville & Nashville R. R. Co.,* 236 U. S. 318. And the case is confined to the twelfth paragraph of the resolution, the witness not having refused answers concerning other subjects. This paragraph relates exclusively to expenditures for political purposes and for suppressing competition. Neither the question of reasonable rates nor any direction or supervision of the manner of keeping accounts of expenditures was being investigated by the Commission. The questions as to amounts expended on political activities and suppression of competition were simply asked as a measure of the extent of the company's activities in those ways. Even if the investigation had concerned the reasonableness of rates, expenditures would not have become material unless the company had claimed that its rates could not be lowered without making its receipts less than cost, and if that claim had been made it would have been idle to investigate merely expenditures upon political activities—necessarily slight as compared with all expenditures.

The subject of political activity is not one which the Commission is "legally entitled to investigate." Nor is what a carrier may do to mould public opinion. The Commission's powers are confined to administering the Act to Regulate Commerce, and these subjects are not covered by that act. The Commission repeatedly has said that its powers are limited to enforcing the act. 2d Annual Report, p. 21; 13th Annual Report, p. 11; 14th Annual Report, p. 10; *Traders & Travellers Union* v. *Philadelphia R. &c. Co.*, 1 I. C. C. 371, 374; *New York Produce Exchange* v. *Baltimore & Ohio R. R. Co.*, 7 I. C. C. 612, 658; *Spring* v. *Baltimore & Ohio R. R. Co.*, 8 I. C. C. 443, 456; *Haines* v. *Chicago, Rock Island R. R. Co.*, 13 I. C. C. 214, 216. See *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 221.

Neither does the act relate to the matter of suppressing competition. This is left to the Anti-Trust Act. *Spring* v. *Baltimore & Ohio R. R. Co.*, *supra; United States* v. *Joint-Traffic Association*, 171 U. S. 505, 565. The only possible exception is the fifth section of the former act forbidding pooling and division of earnings—a subject which the Commission's order in no way involves. The amendment of § 13 by the Act of June 18, 1910, does not change the principle settled by the *Brimson Case, supra.* Whatever may be the Commission's power of investigation, when the subject as limited and defined by its order is not "one which the Commission is legally entitled to investigate," then no question relating to it can properly be asked. The amendment confines the power strictly to matters covered by the Commerce Act. Such are its words. It does not empower the Commission to inquire into everything pertaining to commerce. Whether the language of the amendment, "concerning which any question which may arise under any of the provisions of this act," refers to questions which have arisen before investigation or questions which may possibly arise in the future, is not material in this case where the Commission chose to limit the investigation by the language of its order. But these words of the amendment are not susceptible of the broader meaning. The granting of "such autocratic power" would require "explicit and unmistakable words." *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407. Although the amendment was passed after the decision in the *Harriman Case*, Congress did not use the "explicit and unmistakable words" and could not, therefore, have intended to make such a grant. A question may not be said to *have arisen* merely because it is asked by the counsel for the Commission in the examination of a witness, where the question does not relate to the subject of investigation fixed by the order. The questions concerning expenditures in political campaigns in Tennessee and in Alabama manifestly related to political activities merely, and were clearly beyond the Commission's power to investigate.

Mr. Joseph W. Folk for the Interstate Commerce Commission.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

The fundamental contention of appellant is that the Interstate Commerce Commission has no power to ask the questions in controversy and in emphasis of this he asserts "the inquiry was confined exclusively to supposed political activities and efforts to suppress competition." And these, it is further asserted, "are not matters which the Commission 'is legally entitled to investigate.'" The contention is attempted to be supported by the insistence that the investigation was provoked and prosecuted solely in obedience to the Senate resolution and neither in exercise of the judgment of the Commission nor in pursuance of a complaint made to it. And the twelfth paragraph of the resolution is dwelt upon as directing and controlling the inquiry as to what amount, if any, the railroads "have subscribed, expended or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

If, however, we advert to the questions we observe that the matters dwelt on by appellant are incidents only, having the purpose, it may be, in one sense to ascertain the "amount, if any," subscribed or expended, but not having the purpose in the sense of the questions, which is: Whether the amount subscribed or expended was charged to operating or legal expenses. The latter purpose is more special than the other, and, we may say in passing, does not necessarily involve even a criticism of the other, involves only the display in the accounts of the carriers of the amount expended and its allocation. To this limitation the investigation is reduced, and the question is, being so reduced, Is it within the powers of the Commission?

The Interstate Commerce Act confers upon the Commission powers of investigation in very broad language and this court has refused by construction to limit it so far as the business of the carriers is concerned and their relation to the public.[1] And it would seem to be a necessary deduction from the cases that the investigating and supervising powers of the Commission extend to all of the activities of carriers and to all sums expended by them which could affect in any way their benefit or burden as agents of the public. If it be grasped thoroughly and kept in attention that they are public agents, we have at least the principle which should determine judgment in particular instances of regulation or investigation; and it is not far from true—it may be it is entirely true, as said by the Commission—that "there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce."

---

[1] *Wilson* v. *New*, 243 U. S. 332; *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *United States* v. *White Star Line*, 224 U. S. 194; *Hale* v. *Henkel*, 201 U. S. 43; *Interstate Commerce Commission* v. *Chicago, R. I. & Pac. Ry. Co.*, 218 U. S. 88.

Turning to the specialties of the Interstate Commerce Act we find there that all charges and treatment of all passengers and property shall be just and reasonable, and there is a specific prohibition of preferences and discriminations in all the ways that they can be executed, with corresponding regulatory power in the Commission. And authority and means are given to enable it to perform its duty. By § 12 it is authorized to inquire into the management of the business of carriers and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from the carriers full and complete information. It may (§ 13) institute an inquiry of its own motion, and may (§ 20) require detailed accounts of all the expenditures and revenues of carriers and a complete exhibit of their financial operations and prescribe the forms of accounts, records and memoranda to be kept. And it is required to report to Congress all data collected by it.

It would seem to be an idle work to point out the complete comprehensiveness of the language of these sections and we are not disposed to spend any time to argue that it necessarily includes the power to inquire into expenditures and their proper assignment in the accounts, and the questions under review, we have seen, go no farther. They are incidental to an investigation as to the "manner and method" (§ 12) in which the business of the carriers is conducted; they are in requisition of a detailed account of their expenditures and revenues and an exhibit of their financial operations (§ 20), and the answers to them may be valuable as information to Congress (§ 21).

A limitation, however, is deduced from § 13. It is said to be confined to cases where an inquiry is instituted "as to any matter or thing concerning which a complaint is authorized to be made, . . . or concerning which any question may arise under any of the provisions" of the act "or relating to the enforcement of any of the provisions" of the act. In other words, that the inquiry is determined by the manner of procedure. The objection overlooks the practical and vigilant function of the Commission. To sustain it appellant seems to urge that there must be put into words by some complainant or by the Commission, if it move of itself, some definite charge of evil or abuse, and put into expression some definite remedy; and that an inquiry must not transcend either charge or remedy. To so transcend, appellant urges, would be an exercise of autocratic power and is condemned in *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407.

Appellant presses that case beyond its principle. And we may observe that § 13 has been amended and broadened since the decision of that case.[1] The inquiry in the present case is more immediate to the function of the

---

[1] Prior to the decision § 13 read as follows: "Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."

After the decision the section was amended to read as follows: . . . "and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act."

Commission than the inquiry in that and comes within *Interstate Commerce Commission* v. *Chicago, R. I. & Pac. Ry., supra,* where it was said, at p. 103: "The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided." And they must necessarily be expressed in generalities. A precise specification of powers might work a limitation and all not enumerated be asserted to be withheld.

We find it difficult to treat counsel's argument as seriously as they urge it. The expenditures of the carriers essentially concern their business. Section 20 declares it and gives the Commission power to require a detail of them, and necessarily not only of their amount but purpose and how charged. And the Commission must have power to prevent evasion of its orders and detect in any formal compliance or in the assignment of expenses a "possible concealment of forbidden practices."

It may be said that our comments are not applicable to questions numbered 7 and 8, which relate to the expenditure of money in Alabama "in a campaign against rate reductions." That is, those questions are not directed to "political activities" strictly so called, nor to the suppression of competition. They are directed, however, to the use of funds in a campaign against state legislative action. But this, appellant asserts, is at the farthest an attempt to "influence legislation or to mould public opinion" and that there is nothing in the Interstate Commerce Act "which forbids it or gives to the Commission any power to investigate the subject." And it is besides urged, as it is urged against the other questions, that they do not relate to "the subject under investigation," which is strictly defined by the Senate resolution, to which, it is contended, the order of the Commission was responsive and subservient, and was to be and is confined to the efforts simply "of the railroad companies in political matters and in attempts to suppress competition." Indeed, the servility of the Commission to the Senate's resolution is the basic and insistent contention of appellant and taints, he further contends, all that the Commission did.

The contention ascribes too much dominance to the resolution and puts out of view or unduly subordinates the invocation of the powers of the Commission by the complaint of Lea and the interval of two years between it and the resolution, and puts out of view besides the independent and inherent powers of the Commission to which we have adverted.

Abstractly speaking, we are not disposed to say that a carrier may not attempt to mould or enlighten public opinion, but we are quite clear that its conduct and the expenditures of its funds are open to inquiry. If it may not rest inactive and suffer injustice, it may not on the other hand use its funds and its power in opposition to the policies of government. Beyond this generality it is not necessary to go. The questions in the case are not of broad extent. They are quite special, and we regard them, as the learned judge of the court below regarded them, as but incident to the amount of expenditures and to the manner of their charge upon the books of the companies. This, we repeat, is within the power of the Commission. The purpose of an investigation is the penetration of disguises or to form a definite estimate of any conduct of the carriers that may in any way affect their relation to the public. We cannot assume that an investigation will be instituted or conducted for any other purpose or in mere wanton meddling.

Order affirmed.